

Liquor License Review Board

July 22, 2019
City Council Chambers
401 Independence
Cape Girardeau, MO 63701

Board Present: Lori Meyer, Human Resources Manager, Chief Review Officer
Alex McElroy, Development Services Director
Brandon Cooper

City Staff Present: Gayle Conrad, Director of Citizen Services/City Clerk
Greg Young, Assistant City Attorney
Cpl. Richard Couch, Police Department

Others Present: Ron Garms, attorney for River Valley Banquet Center
Ricky Werner
Ms. Elledge, Court Reporter

Call to Order

Chief Review Officer Lori Meyer called the meeting to order at 2:00 p.m., stated the purpose of the meeting, introduced the board members present, and explained the rules of procedure for addressing the Board.

A Motion was made by Cooper, Seconded by McElroy, to approve the April 18, 2019, Liquor License Review Board regular and closed session meeting minutes.
Motion passed. 3-0. Ayes: Cooper, McElroy and Meyer.

Items for Review

Review of appeal of denial of Liquor License Renewal Application for a Retail Liquor by the Drink and Sunday Sales Liquor License for Ricky Lynn Werner, d/b/a River Valley Banquet Center, LLC, located at 631 South Sprigg Street, Cape Girardeau, Missouri

Chief Review Officer Lori Meyer called for Applicant Comment.

Mr. Ron Garms appeared representing Ricky Werner, d/b/a River Valley Banquet Center. He stated that a kitchen has been installed, inspections have been completed, and this location is now a restaurant. He reviewed the incidents that occurred at this location as referenced in the Police Department's recommendation included with the liquor license renewal application. Mr. Garms stated the three referenced incidents have no link to this liquor license renewal. The police reports on the incidents were incomplete and misleading. The reports were given to the City Manager without any statements from other witnesses,

and Mr. Garms felt this information, as well as information in the press, was used to deny the renewal.

Mr. Garms questioned if this establishment was located somewhere else in the city, would it have been determined to be detrimental to the neighborhood? The City attempted to enforce its Chronic Nuisance Ordinance against the establishment, and he felt there was not proper due process. He also stated that the City was holding Mr. Werner to a higher standard than city ordinance and state statute require. In the written recommendation to deny this liquor license, Lt. Brad Smith alleged that Mr. Werner had proven himself in the past unable to properly operate a bar. However, Mr. Werner has never had a license revoked, denied or suspended.

Mr. Garms continued that this matter is dealing with a license that is equivalent to a house. The City is attempting to take Mr. Werner's house. The U.S. Constitution recognizes the right to have a liquor license as property under the constitution. Mr. Werner read City Code of Ordinances Section 1-9 relating to application of the City Code on acts performed in and outside city limits. He stated that while the City can adopt ordinances, they are subordinate to the U.S. and State constitutions. The City's ordinance establishing the Liquor License Review Board raises due process issues because to him it is inherently biased based upon how the members are appointed and the inability to present witnesses or evidence in a hearing. Mr. Garms further explained his opposition to this ordinance. Two of the offenses referenced in the Police recommendation involve operating this facility without a valid business license. A citation is an allegation of facts, not a final determination by a trial of fact, and it is not final until it is fully appealed through the court system. City Code Section 15-2 requires licensing for certain occupations, businesses and trades, and none of those defined in the ordinance cover what Mr. Werner is doing as a banquet hall. Therefore, in Mr. Garms' opinion, Mr. Werner is not required to get a business license. After the citations were issued, Mr. Werner applied for a business license, and the City categorized his business as a "public hall." The courts have defined a public hall, and a building that is carried on as a private enterprise is not a public hall. Mr. Werner operates a private banquet center and not a public hall. Under the Missouri Supreme Court, the City incorrectly categorized Mr. Werner's business, and ultimately charged Mr. Werner with a misdemeanor violation, which is not correct.

Mr. Garms then reviewed City Code Section 1-8 relating to general penalties for misdemeanor violations of the City Code. The business license section of the City Code also contains a financial penalty provision. The City cannot turn a violation of the business license ordinance into a misdemeanor merely by finding he did not complete an act that he should have done.

Mr. Garms reviewed information in the Board agenda packet, including a letter from Lt. Brad Smith, a letter from Chief Wes Blair, and a list of police calls to 631 South Sprigg. Mr. Garms explained that Mr. Werner cannot be held liable for every police response that occurred near 631 South Sprigg, as some were simply traffic stops, trespass, suspicious person, and property damage that were offenses not associated with Mr. Werner's

business. Mr. Garms reviewed in detail information and a photo of the area relating to the referenced incident where numerous shots were fired. There was not proper evidence to determine where the shots came from, and these were unrelated to the operation of this business. Mr. Garms presented an affidavit from a witness of the shooting incident stating that the witness offered to give a statement of what he saw at the scene, but the Police were not interested in taking his statement. Mr. Garms reviewed further and discussed in length the three referenced incidents in the Police Department's recommendation for denial.

Chief Review Officer Lori Meyer called for Staff Comment.

Mrs. Meyer commented that statements in the board agenda packet did indicate that the instances occurred on the premise in question. She asked Mr. Garms to confirm whether or not Mr. Werner operated his establishment without a business license for approximately four months. Mr. Garms responded that a license had not been issued, but it was his position that Mr. Werner is not required to have a business license.

Mr. Cooper reviewed and discussed the reports and incidents contained on the Police citation log included in the agenda packet related to 631 South Sprigg. He questioned if Mr. Werner has a list of events and the dates held at his location. Mr. Garms replied that one could be prepared. However, there are incidents on the Police log that could have occurred outside of Mr. Werner's venue that had nothing to do with his business operation. The address is just a point of reference when complaints are called in to the Police. Mr. Garms continued that Mr. Werner is not always on premise when an event is in progress, but it is his opinion that many of the incidents would have occurred at the address with or without Mr. Werner being present.

Mr. Cooper stated that the Board takes into consideration what actions an owner of a business takes to remedy any issues that occur on the premise. Between the incident that occurred in March 2019 and the current date, what measures have been taken by the owner to prevent these types of incidents from occurring again? Mr. Garms commented that Mr. Werner met with the Police Department when his property was identified as a Chronic Nuisance. He installed lights on the parking lot and agreed to get more detailed contracts with the people who lease his facility for an event. Upon questioning, Mr. Werner stated that Manager Jimmy Seabaugh and a bartender were on the business premise when the incidents occurred. The Board members further discussed the incidents that occurred at this business premise.

Mrs. Meyer asked if there were statements from the Police Department on this issue. Cpl. Couch appeared and read the written report prepared by Lt. Smith attached to the liquor license renewal application stating the reason for recommending denial of the liquor license. He continued that as of the date of the hearing Mr. Gary Tate with the Missouri Division of Liquor Control had informed the Police Department that Mr. Werner did not have a current, valid state liquor license. Lt. Couch stated that the sign in front of Mr. Werner's business now states that the premise is open daily at 11 a.m. Upon questioning

by the Board, Lt. Couch stated he was familiar with the incident logs being referenced and explained how an address is assigned to an incident. He continued that when the Police Department hears of events occurring in the City, they do their due diligence to acquire information about the event, who is performing, who is attending, and other factors about the event. With the incident that occurred on March 31, 2019, the Police Department knew that the person performing at the event had gang affiliations and had seen videos and advertisements of the performer promoting violence. All of this is taken into consideration and may lead to an officer being stationed near an event.

With respect to a state liquor license, Mr. Garms explained that the State has received the application but has not responded in a timely manner. He continued that state law says that a business can continue to operate if State Liquor Control has not taken action on the liquor license application. Therefore, the prior state liquor license was still in effect at the time of the events.

Upon questioning by Mr. Cooper, Assistant City Attorney Greg Young stated that if the Board makes a determination to uphold the decision of the City Manager to deny the liquor license renewal, the Board must prepare a written decision stating the grounds for the denial. At that point, the decision of the Board can be appealed to the City Council.

The Board reviewed and discussed the information provided and the comments presented. Following discussion, Mrs. Meyer made a motion, seconded by Mr. Cooper, to uphold the decision of the City Manager to deny the liquor license renewal for Ricky Lynn Werner, d/b/a River Valley Banquet Center, LLC, 631 South Sprigg Street. The motion passed 3-0. Ayes: Cooper, McElroy and Meyer.

Meeting Adjournment

There being no further business, the meeting ended at 3:30 p.m. A Motion was made by Mr. Cooper, Seconded by Mrs. Meyer, to adjourn. Motion passed. 3-0. Ayes: Cooper, McElroy and Meyer.

Minutes taken by:
Gayle Conrad
Director of Citizen Services/City Clerk