

ALCOHOL CONTROL COMMISSION

Monday, November 16, 2015

The Alcohol Control Commission met at 5:00 p.m. this date in the Commission Chambers of City Hall, 601 Broad Street. Chairman Slack presided with Commissioner Canada, Commissioner Lee, Mr. Hyde, Mr. Redding, and Mr. Doss present.

Minutes – October 19, 2015

The minutes of the October 19, 2015 meeting, as submitted in writing by the Secretary, were approved by an unanimous consent.

Little Garden, 1901 Dean Street

The application of Vickie Elrod, owner and manager of Little Garden, 1901 Dean Street, was presented. Ms. Elrod requested that a new Wine Pouring License be issued to her at that location. The Beer Package License is also being transferred to her from Lara George. Ms. Elrod explained that she has purchased Little Garden which was formerly known as Rick's Little Garden and prior to that as Roy's Little Garden. Ms. Elrod stated that this will be her first time as an alcohol licensee; however, she is familiar with Rome's Alcohol Rules and Regulations. Although she has no formal training process in place for her other two employees, she assured the ACC that they will be properly trained in ways to avoid the sale of alcohol to a person under 21.

Commissioner Canada moved to approve the license request as submitted. Mr. Doss seconded, and the vote was unanimously in favor.

Shorter Avenue Liquor Package License Requests – Big Time Liquor, Wine, and Tobacco, 2106 Shorter Avenue and Cheers Liquor, 2121 Shorter Avenue

Secretary Smith introduced the topic of liquor store requests on Shorter Avenue. These license requests are in close proximity to each other and would not meet the State of Georgia requirement of the 1500 foot-distance buffer that must exist between new liquor package outlets. Secretary Smith reviewed the following letter which was written by him and provided to the ACC members, prior to the meeting, along with the agenda.

“We will have an unusual license request that will appear before the ACC at the November 16th meeting. This issue revolves around the State of Georgia Statute (and subsequent City Ordinance) that requires a separation of at least 1500 feet between new liquor package outlets. We have two applicants interested in opening a new liquor stores within that 1500 foot radius of each other. Under current law both liquor stores are not allowed to open. The applications are for liquor stores at 2106 Shorter Avenue and 2121 Shorter Avenue.

At the April 20, 2015 meeting of the Alcohol Control Commission, an application for Mr. Larry Martin was presented. The request was for a

new beer, wine, and liquor package license for 2106 Shorter Avenue (Big Time Liquor and Wine). Mr. Martin explained that he would be relocating the existing used car business at this site and constructing a new building which would house the liquor store. The April 20th ACC minutes for this request are attached. Mr. Martin's request was granted subject to the final approval by the Building Inspector, Fire Marshall, and Traffic Engineer. Normally an approved application is valid for 90 days, but since a business was being relocated and a new facility was going to be constructed, the ACC specified that the approval was valid for 180 days.

That 180 day period has now expired and Big Time Liquor and Wine has not been constructed. I have spoken with Mr. Martin and Building Official Howard Gibson. Both have told me that although the building at 2106 Shorter has not been constructed, efforts have been underway to allow that to happen. Variances have been obtained, the steel structure for the building has been delivered, and the existing business office is being removed. Mr. Martin said that he plans to begin construction within 3 weeks.

Mr. Martin is requesting an additional 180 days to allow the establishment of this liquor store.

Mr. Patel, the applicant for 2121 Shorter, originally received approval from the ACC for his liquor store on March 17, 2014. When the liquor store was not established, he received a 90 day extension from the ACC on August 5, 2014, although Mr. Patel still did not open the liquor store. Eventually some other type of general merchandise store opened at 2121 Shorter Avenue. Since Mr. Patel never exercised his option to open his liquor store, Mr. Martin was free to apply for his store, which he did on March 31, 2015. Mr. Patel contacted me during the late spring or early summer of 2015 inquiring again about opening a liquor store at 2121 Shorter. We explained that Mr. Martin was now an applicant and he would not be able to apply. Now that Mr. Martin's 180 days are up, Mr. Patel wishes to now once again.

That brings us to our current situation. The questions is – does the ACC grant Mr. Martin more time to complete his project since he has been actively trying to move forward OR do we tell Mr. Martin that he is out and allow Mr. Patel to once again move forward with his liquor store plans? Considering all known factors involved and the past actions by both applicants, it appears to staff that the most appropriate action is to grant Mr. Martin additional time to complete his project.

Please let me know if you have any questions or comments.”

Members of the ACC stated that they understood the question at hand which was a matter of them choosing which liquor package store would be allowed to move forward and open.

Addressing the ACC first was Mr. Viral “Willie” Patel, the proposed operator of Cheers Liquor, 2121 Shorter Avenue. Mr. Patel was represented by his attorney who identified himself as Brad McFall, County Attorney for Polk County. Mr. McFall stated that he is knowledgeable in Municipal Law and proceeded to explain to the ACC why Mr. Patel should be granted his license request rather than Mr. Larry Martin. Mr. McFall had some procedural questions for City Clerk Joe Smith regarding the applications for both license requests. Mr. McFall referenced City Code Sections 3-180, 3-178, and 3-169. Mr. McFall explained that the Alcohol Control Commission was not legally able to act on Mr. Martin’s license request since his 180-day period granted by the ACC in April, 2015 had expired, and that Mr. Martin’s request for an extension of that period was essentially a new license request. Secretary Smith responded that he did not see Mr. Martin’s actions as a new license request, but only an extension of the existing license application. Mr. McFall based the majority of his argument and his comments surrounding City Code Section 3-178 (a) – *“no applicant under this division may submit, and the Alcohol Control Commission shall not act upon, an application which is substantially the same as an application submitted within the previous six months, unless directed by the Commission.”* McFall also stated that the total amount of time that the ACC could give to an applicant was 180 days.

Mr. McFall stated that based on that City Code Section, the Alcohol Control Commission could not act on Mr. Martin’s request since it was a new license application. Secretary Smith again did not concede that Mr. Martin’s action was a new license request, but rather an extension of his license application which was approved by the Alcohol Control Commission in April, 2015. However, Smith did make comments regarding Code Section 3-178 and stated that based on his 28 years of experience with Rome’s Alcohol Ordinance and his numerous conversations with former City Attorney Bob Brinson (the author of this ordinance), the intent was not to prevent the Alcohol Control Commission from taking action or extending the approval period, but rather to prohibiting someone who had a license request denied by the Alcohol Control Commission from resubmitting an application which was substantially the same as the one denied. Mr. McFall dismissed Smith’s interpretation of the ordinance stating “that’s not how it reads.”

Referring back to his letter summarizing this action, Smith pointed out that when Mr. Willie Patel was granted his 90-day extension on August 5, 2014, Mr. Patel’s 90-day window for acting on his approved license (from March 17, 2014) had expired, and the Alcohol Control Commission treated his request not as a new license, but simply as a request for an extension, just as Mr. Martin is asking for today.

Addressing the ACC next was Mr. Larry Martin, the applicant for Big Time Liquor, Wine, and Tobacco, 2106 Shorter Avenue. Mr. Martin stated that since his original approval from the Alcohol Control Commission was received on April 20, 2015, he has

been working to prepare his lot for construction of this facility. Mr. Martin stated that it was a complicated process since he was moving an existing business from 2106 Shorter Avenue to another location, had to apply for and obtain a variance from the City of Rome's Board of Adjustments, wait for the City of Rome to install the required new water line, and work around weather delays, he had not yet been able to construct his building. Mr. Martin continued to review his actions that had taken place during the past six months, adding that the existing pavement from this lot has been removed and the steel for the new building is on site. Mr. Martin stated that he expected to be able to pour footers and begin construction of the building within the next week. Mr. Martin emphasized that he has a tenant ready to operate this business when the building is ready, and this is not being built as a speculative venture.

Secretary Smith pointed out that Chief Building Inspector Howard Gibson was in attendance at tonight's meeting and was probably the most knowledgeable individual who could address Mr. Martin's efforts at 2106 Shorter Avenue from a City of Rome perspective. The Alcohol Control Commission did not hear from or have any questions of Mr. Gibson.

The Alcohol Control Commission continued to discuss this matter. There were questions regarding the specific time in which Mr. Patel filed his new application for the liquor package store. This application was filed on November 4, 2015. Secretary Smith acknowledged that he had conversations with Mr. Patel as early as the summer of 2015 regarding his resubmission of a license request for 2121 Shorter Avenue. It was explained to Mr. Patel that Mr. Martin had approval from the Alcohol Control Commission that was scheduled to expire on or about October 20, 2015. There were additional conversations between the City Clerk's office and Mr. Patel regarding his potential application which was eventually filed on November 4, 2015. Secretary Smith also reported that his office had conversations with Mr. Martin regarding his need for an extension from the ACC. Mr. Martin filed a letter requesting an extension with the City Clerk's Office on November 6, 2015. The ACC continued to debate this point, and Mr. Patel stated that he is ready to open his business and will open his business if the ACC grants his license request.

After further discussion by the ACC, Commissioner Canada moved to approve the license request for Viral "Willie" Patel for a Liquor Package License at Cheer's Liquor, 2121 Shorter Avenue. Mr. Doss seconded the motion, and the vote was unanimously in favor. Mr. Patel thanked the ACC for their action, and Mr. Martin understood that he now could no longer go forward with his liquor store project at 2106 Shorter Avenue.

Goat's General Store, 222 Broad Street – Hearing for After Hours Alcohol Service

It was announced that a Hearing would be conducted concerning a citation issued by the Rome Police Department for "after hours" alcohol service at Goat's General Store, 222 Broad Street. This incident took place on the morning of October 25, 2015.

Assistant City Attorney Stephen Mosely administered the oath to all persons that would be speaking in this Hearing.

Rome Police Officer Brent Novinger presented the following report:

ON SATURDAY, OCTOBER 24, 2015, AT APPROXIMATELY 0230 HOURS, I (OFC NOVINGER) RESPONDED TO 9 E 2ND AVE IN REFERENCE TO A NOISE COMPLAINT. I WAS ADVISED BY THE 911 CENTER THAT THE NOISE WAS COMING FROM THE PARKING LOT AREA BEHIND THE LOFT APARTMENTS. WHILE CHECKING THE AREA, I OBSERVED 10-15 PEOPLE SITTING AT SEVERAL TABLES BEHIND THE BUSINESS AT 222 BROAD ST (GOAT'S GENERAL STORE). MOST OF THE PATRONS WERE CONSUMING ALCOHOLIC BEVERAGES AT THAT TIME, AND MANY OF THEM APPEARED TO BE INTOXICATED. I WAS ADVISED BY SEVERAL OF THE PATRONS THAT THEY PURCHASED THE BEVERAGES INSIDE THE BUSINESS. I OBSERVED THAT SEVERAL OF THE BEVERAGES WERE FULL OR NEARLY FULL, WHICH LED ME TO BELIEVE THAT THEY HAD PURCHASED THEM JUST PRIOR TO MY ARRIVAL. I THEN MADE CONTACT WITH PAUL ELLIOTT, WHO IDENTIFIED HIMSELF AS THE BUSINESS OWNER. I ADVISED MR. ELLIOTT OF THE CITY'S ALCOHOL POURING ORDINANCES. I ASKED MR. ELLIOTT TO CLEAR THE BUSINESS AND GAVE HIM A VERBAL WARNING FOR THE VIOLATIONS. I ADVISED MR. ELLIOTT THAT I WOULD RETURN TO CHECK FOR VIOLATIONS IN THE FUTURE AND THAT HE WOULD BE CITED IF VIOLATIONS CONTINUED.

ON SUNDAY, OCTOBER 25, 2015, AT APPROXIMATELY 0205 HOURS, I RETURNED TO THE BUSINESS TO CHECK FOR ALCOHOL POURING VIOLATIONS. UPON ARRIVAL, I OBSERVED SEVERAL PEOPLE IN THE AREA BEHIND THE BUSINESS. SEVERAL OF THEM HAD ALCOHOLIC BEVERAGES IN THEIR POSSESSION. I OBSERVED AS PEOPLE WENT IN AND OUT OF THE REAR DOOR OF THE BUSINESS. I THEN ENTERED THE BUSINESS TO MAKE CONTACT WITH MR. ELLIOTT. I LOCATED MR. ELLIOTT IN THE BAR AREA. MR. ELLIOTT WAS STANDING BEHIND THE BAR AND SEVERAL BAR PATRONS WERE STANDING AT THE BAR WITH ALCOHOLIC BEVERAGES.

MR. ELLIOTT WAS AGAIN ADVISED THAT ORDINANCES PROHIBITED SERVING ALCOHOL AFTER 0130 HOURS AND THAT PATRONS WERE NOT ALLOWED TO BE ON THE PREMISES CONSUMING ALCOHOL AFTER 0200 HOURS. MR. ELLIOTT STATED THAT HE HAD A COPY OF THE CITY ORDINANCES GOVERNING POURING ESTABLISHMENTS. MR. ELLIOTT WAS ISSUED A COPY CHARGE FOR A VIOLATION OF SECTION 3-277(5)-PATRONS NOT ALLOWED TO CONSUME ALCOHOL ON PREMISES AFTER 0200.

MR. ELLIOTT STATED THAT HE ATTEMPTED TO GET PEOPLE TO LEAVE, BUT STATED THAT THEY WOULD NOT LEAVE. MR. ELLIOTT WAS NOT ACTIVELY ATTEMPTING TO GET PEOPLE TO LEAVE WHEN I ARRIVED. HE ASKED PEOPLE TO LEAVE AS I WAS ISSUING HIM THE CITATION. MR. ELLIOTT DID NOT CONTACT 911 TO HAVE PEOPLE WHO REFUSED TO LEAVE ESCORTED FROM THE PROPERTY.

MR. ELLIOTT ASKED IF ROME POLICE OFFICERS WERE ALLOWED TO WORK SECURITY AT THE ESTABLISHMENT. MR. ELLIOTT WAS REFERRED TO ROME POLICE ADMINISTRATION TO OBTAIN APPROVAL FOR OFFICERS TO WORK AT THE ESTABLISHMENT. I ALSO ADVISED MR. ELLIOTT THAT THERE WERE SPECIFIC ORDINANCES GOVERNING PRIVATE SECURITY AT POURING ESTABLISHMENTS.

I ADVISED MR. ELLIOTT THAT CONTINUED VIOLATIONS OF THE POURING ORDINANCE WOULD RESULT IN CITATIONS.

SEE ALSO CASE #201505700

NO FURTHER POLICE ACTION TAKEN AT THE TIME OF REPORT
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Following Officer Novinger's presentation, Mr. Mike Elliott, licensee at Goat's General Store, addressed the Commission. Mr. Elliott spent time explaining the back area he created behind his business. This is more or less a patio area consisting of tables and chairs and a temporary fence area that allowed people to smoke and consume alcohol outside of his building. This area is located on private property. Mr. Elliott stated that he had permission from the adjoining property owner to create this patio; however, there was some dispute concerning Mr. Elliott's permission to use this property.

Mr. Elliott explained that he had locked the back door, and there was no one on the patio after 1 a.m. on the morning of which the citation was issued. He stated this was the night of the October Block Party on Broad Street, and after 1 a.m. a big crowd came in to his business, and some of his customers unlocked the back door, were letting other people enter from the back door and were using the patio area. He stated that he was busy trying to take care of his customers and did not realize that people were consuming alcohol after the allowed time. Mr. Elliott did not dispute the report given by Officer Novinger. Mr. Elliott did state that he was not selling alcohol after hours. During the discussion Mr.

Elliott stated that he has now removed the rear patio area so that option for his customers no longer exists. He also stated that he had changed the lock on his back door and was awaiting the installation of a panic bar system. Mr. Elliott was cautioned to not secure his back door in a way that would be in violation of the Fire Safety Regulations. He was encouraged to contact the Building Inspection Department for guidance on the specific requirements. Commissioner Canada stated that since Mr. Elliott had been warned about this matter and the violation occurred subsequently, he moved to recommend to the City Commission that Mr. Elliott receive a letter of warning concerning this violation and a \$250 monetary penalty. Commissioner Lee seconded the motion, and the vote was unanimously in favor. This recommendation will be presented to the City Commission at their meeting on November 23, 2015. Mr. Elliott was instructed that he could attend that meeting and make comments to the City Commission; however, an additional Hearing would not be held, and he should not present any new evidence at that time. Following the Hearing, Mr. Doss informed Mr. Elliott that it was his understanding that the adjoining property owner had not given him permission to use the rear property for his patio, and on one of his visits to Goat's General Store, he found the front door locked; however, the back door was unlocked with customer activity in the patio area.

El Patron, 1802 Redmond Circle – Hearing for After Hours Alcohol Service and for Furnishing Alcohol to a Person Under 21

It was noted that a Hearing will be held for citations issued by the Rome Police Department to the manager of El Patron, 1802 Redmond Circle, for “after hours” service of alcohol and the furnishing of alcohol to a person under 21. These alleged violations took place on the morning of October 25, 2015.

Assistant City Attorney Stephen Mosely administered the oath to all persons who would be testifying during this Hearing. Officer Zachary Colvin had been the investigating officer; however, Officer Colvin is sick and was unable to attend this meeting. On behalf of the Rome Police Department was Officer Rusty Blair. Officer Blair reviewed the following report:

ON OCTOBER 25, 2015, (SUNDAY) AT APPROXIMATELY 2:00AM, I PULLED ONTO THE LOT OF EL PATRON AND NOTICED THERE WERE STILL SEVERAL CARS IN THE PARKING LOT, AND NO ONE WAS LEAVING THE BUSINESS. I SAT ON THE LOT FOR A FEW MINUTES UNTIL I ADVISED DISPATCH I WAS CHECKING OUT AT THE BUSINESS AT 2:05AM. I WALKED INTO THE BUSINESS AND I OBSERVED THERE TO BE ABOUT 50 PEOPLE STILL IN THE BUSINESS. I ALSO OBSERVED AT LEAST 15 PEOPLE STILL CONSUMING ALCOHOL ON THE PREMISES AND THE BAND WAS STILL PLAYING MUSIC. I ASKED ONE OF THE SECURITY GUARDS IF THEY WERE WRAPPING UP SOON AND HE DID NOT SEEM TO KNOW. A HISPANIC MALE THEN ATTEMPTED TO WALK BY ME AND GO OUT THE FRONT DOOR WHILE STILL DRINKING A BOTTLE OF BEER. I TOLD HIM HE COULD NOT TAKE THE BEER OUTSIDE. AFTER A FEW MINUTES I LOCATED THE MANAGER, SANDRA GONZALEZ. I SPOKE TO HER OUTSIDE FOR A FEW MINUTES AND ADVISED HER IT WAS AFTER 2:00AM AND NO ONE COULD BE CONSUMING ALCOHOL ANYMORE. SHE THEN ASKED ME TO HELP CLEAR EVERYONE OUT OF THE BUSINESS. WHEN WE WENT BACK INSIDE SHE TOLD THE BAND TO STOP, BUT DID NOT CLEAR ANYONE OUT OF THE BUILDING UNTIL ANOTHER SECURITY GUARD CAME IN AND TOLD EVERYONE IT WAS TIME TO LEAVE. AT THAT TIME, I NOTICED A VERY YOUNG HISPANIC MALE THAT I ESTIMATED TO BE IN HIS MID TEENS WALKING OUT OF THE BUSINESS.

I FOLLOWED HIM OUT AND NOTICED A STRONG ODOR OF AN ALCOHOLIC BEVERAGE ON HIS BREATH. THE MALE WHO WAS LATER IDENTIFIED AS JAISON CARONA DID NOT SPEAK ANY ENGLISH. I ASKED HIM IN SPANISH WHAT HIS NAME WAS AND HE SAID ALEX. I THEN ASKED HIM HOW OLD HE WAS AND HE RESPONDED 21 IN SPANISH. I THEN ASKED HIM WHAT HIS BIRTHDAY WAS AND HE STATED IT WAS IN 1997, THEN CHANGED HIS MIND TO 1995. I THEN PLACED HIM UNDER ARREST FOR UNDERAGE POSSESSION OF ALCOHOL. MRS GONZALEZ THEN CAME OUTSIDE AND I SHOWED MR CARDONA TO HER. I TOLD HER HE HAD NO ID ON HIM AND SHE STATED HE HAD BEEN AT EL PATRON BEFORE, AND THAT HE HAD BROUGHT AN ID IN THE PAST. I ASKED HER WHEN HE HAD BEEN THERE OR WHAT HIS NAME WAS AND SHE DID NOT KNOW. I THEN ADVISED MRS GONZALEZ I WAS CHARGING HER, AS THE MANAGER OF EL PATRON, WITH FURNISHING ALCOHOL TO A MINOR. I ALSO CHARGED MRS GONZALEZ WITH VIOLATING THE GUIDELINES OF THE POURING LICENSE BY ALLOWING CUSTOMERS TO CONSUME ALCOHOL AFTER 2:00AM ON THE PREMISES. MRS GONZALEZ WAS ISSUED CITATIONS FOR BOTH CHARGES ON SCENE. WHILE ISSUING THE CITATIONS MRS GONZALEZ STATED THAT THE MALE WAS DRUNK BEFORE HE ARRIVED AT EL PATRON.

I THEN TRANSPORTED MR. CARDONA TO THE FLOYD COUNTY JAIL WHERE WE MET WITH A DEPUTY WHO COULD TRANSPATE FOR ME. MR CARDONA ADVISED HE HAD NEVER BEEN TO EL PATRON BEFORE. I ISSUED HIM A CITY COPY CHARGE FOR UNDERAGE POSSESSION OF ALCOHOL AND BOOKED HIM INTO THE JAIL ON THAT CHARGE WITHOUT INCIDENT.

2SRPD158354

Addressing the ACC on behalf of El Patron was Attorney Chris Jackson. Mr. Jackson presented a very lengthy commentary to the ACC with several questions for Officer Blair regarding the conditions that were found at El Patron on the night of the alleged violation, such as whether or not the open sign was illuminated and if the Rome Police Officers witnessed any “after hours” service by El Patron employees (which they did not). Mr. Jackson first addressed the charge of providing alcohol to a person under 21. Throughout the course of his testimony and questioning, his position was that there was no evidence that the person who was under 21 years of age obtained, or consumed alcohol at El Patron. It was determined that there was no witness that saw this person drinking alcohol at El Patron and none who witnessed him obtain it at El Patron. The only evidence was that the underage person had consumed alcohol at some point during the evening at some location. Mr. Jackson spent considerable time questioning Derek Williams, one of the security officers at El Patron regarding the general practices at that establishment and the specifics that occurred that night. Among the issues explained by Mr. Williams was the arm band and hand-stamped system that is used at El Patron to differentiate between those that are inside the establishment and of legal drinking age.

Following many more statements from Mr. Jackson and a brief discussion period by the Alcohol Control Commission, Commissioner Canada moved to issue a letter of warning to El Patron for the offense of allowing after hours consumption of alcohol and issue a letter of warning concerning the charge of furnishing alcohol to a person under 21. Commissioner Canada explained that this was El Patron’s first offense for after hours consumption, and they have not received a warning for this in the past. Mr. Redding seconded the motion, and the vote was unanimously in favor.

Police Report

Major Debbie Burnett with the Rome Police Department was present and presented the police report for the previous 30-day period. The only incidents on that report were the ones that were addressed during tonight's Hearings.

Major Burnett did state that citations had recently been issued at Buchanan's Sports Bar, 2730 Martha Berry Highway. These citations were for furnishing alcohol to a minor and for after hours sale of alcohol to a minor. A Hearing will be scheduled for the December 21st meeting of the Alcohol Control Commission concerning these charges.

Adjourned

With there being no further business, Chairman Slack adjourned the meeting at 7:30 p.m.

Joseph F. Smith
City Clerk