

**OFFICE OF THE DIRECTOR OF EXCISE AND LICENSES  
DENVER, COLORADO**

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**FINAL DECISION**

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**IN THE MATTER OF THE APPLICATION OF MELODEE SIDEBOTTOM, DOING  
BUSINESS AS JAMMIN JOE'S BBQ, LLC, FOR A BEER AND WINE LIQUOR  
LICENSE FOR THE PREMISES KNOWN AND DESIGNATED AS 2600 HIGH  
STREET, DENVER, COLORADO**

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Procedural History

This matter came to hearing on November 1, 2013 pursuant to an application and prior notice filed by Melodee Sidebottom ("Applicant"), doing business as Jammin Joe's BBQ, LLC, for a Beer and Wine Liquor License for the premises known and designated as 2600 High Street, Denver, Colorado.

Following the hearing, Hearing Officer Anthony Marquez issued a Recommended Decision on November 7, 2013 ("Recommended Decision"), recommending denial of the license application based on the evidence and testimony presented.

The Department of Excise and Licenses ("Department") issued a Scheduling Order on November 8, 2013, allowing parties in interest to file objections or responses to the Recommended Decision within ten (10) days.

On November 15, 2013, the Applicant, Ms. Sidebottom, filed objections to the Recommended Decision ("Applicant's Objections"). On November 18, 2013, Mr. Joe Van Dyke, a consultant to the Applicant's business, also filed objections to the Recommended Decision.

On November 18, 2013, Mr. Joe Mauro, a party in interest who represented the Protestants at the hearing, filed a response to the Recommended Decision.

In addition to the filings described above, the Department received six (6) brief post-hearing submissions from parties in interest who either supported or opposed the application. They were considered to the extent that they were received within specified deadlines and were relevant to the issues in this matter.

Whittier Neighborhood Organization, a registered neighborhood organization within the designated area, appeared at the hearing to present a Good Neighbor Agreement with the Applicant. The neighborhood organization, however, did not support or oppose the application.

### Findings and Conclusions

In determining whether to grant an application for a new liquor license, the Department, as the local licensing authority, must consider the “needs and desires” of the neighborhood in accordance with the Colorado Liquor Code. *See* C.R.S. § 12-47-301(2)(a). The burden of proof for issuance of the license is on the applicant. If the applicant establishes a prima facie case for issuance of the license, the burden shifts to the protestants, if any, to rebut or overcome the applicant’s case.

Thus, the key issue in a new liquor license application proceeding is whether the neighborhood needs and desires that the license be issued. When a local licensing authority makes a finding regarding issuance or denial of a liquor license based on the controlling factor of needs and desires, courts will uphold the authority’s determination upon review. *See Mobell v. Meyer*, 469 P.2d 414, 415 (Colo. 1970).

Local liquor licensing authorities in Colorado have discretion in determining the necessity of the issuance of a particular license, and courts do not substitute their judgment for that of the local authority when there is competent evidence to support the decision. *See Board of County Commissioners v. Bova*, 385 P.2d 590, 591-92 (Colo. 1963) (“Neither this Court nor the trial court may substitute its opinion for the determination made by the local licensing authority in granting or denying a license nor interfere with the exercise of its discretion where its action is based on evidence from which reasonable men might honestly draw different conclusions.”) (internal citations omitted). Further, where there is sufficient evidence to support the judgment of the licensing authority, courts will affirm the licensing authority’s decision. *See Canjar v. Huerta*, 566 P.2d 1071 (Colo. 1977).

Here, the Hearing Officer found that the Applicant failed to present sufficient and credible evidence that the neighborhood needs and desires the requested liquor license. Further, the Hearing Officer found that the Protestants offered persuasive evidence that the neighborhood does not need and desire the license.

Specifically, the Applicant’s petitions in support of the application (Applicant’s Exhibits A-2(a-b)) contained material defects that were raised at the hearing and in Protestant’s post-hearing response. Based upon the manner in which the petitions were gathered and objections to their admissibility, the Hearing Officer determined that the entire set of petitions supporting the application should not be considered. *See Recommended Decision*, pg. 5, para. 17. It is undisputed that more than half of the 288 total signatures offered by the Applicant were from people who did not reside or own or manage a business in the designated area, in violation of Department of Excise and Licenses Policies and Procedures Pertaining to Liquor, 3.2 Beer and Cabaret Licenses. Based upon the evidence and testimony, the Hearing Officer concluded that the petitions in support were not gathered in a credible or reliable manner. Aside from the petitions, the Applicant offered one (1) independent witness from the designated neighborhood to testify in support of the application.

The Protestants offered petitions with signatures of eighty-nine (89) residents within the neighborhood opposed to the application. *See Recommended Decision*, pg. 5, para. 17. The

record indicates that these petitions were gathered in accordance with Department Policies and Procedures. Two (2) residents testified at the hearing in opposition, expressing concerns with the ability of the Applicant to responsibly and lawfully operate if granted the liquor license.

In new liquor license application hearings, the mere number of persons supporting or opposing a license is not alone determinative of "needs and desires." Even if the remaining 135 signatures in support of the application are considered by the Director, however, the relative number of signatures in opposition reveals significant neighborhood concern with the application.

In making his ultimate recommendation, the Hearing Officer found that the totality of the evidence indicated that the Applicant "failed to sustain her burden to show that there is a need for the requested license to meet the reasonable requirements of the neighborhood; that the residents and owners and managers of businesses within the Designated Area desire that the license issue; and that approval of the Application would not be injurious to the health, welfare, safety or morals of the Designated Area." *See Recommended Decision*, pg. 6.


In the Department's quasi-judicial proceedings, the Director substantially defers to a hearing officer's findings of fact. The hearing officer is in the best position to weigh evidence and assess the credibility of witnesses during the hearing.

Upon review of the entire record, including the parties' post-hearing submissions, the Director finds no factual or legal grounds to overturn the Hearing Officer's findings or recommendation. The Hearing Officer's recommendation is supported by the record and the law.

Ultimately, the burden lies with the applicant for issuance of a license. The Applicant did not meet the burden here, and those in opposition presented an effective case that the neighborhood does not need and desire this liquor license.

Therefore, the application of Melodee Sidebottom, doing business as Jammin Joe's BBQ, LLC, for a Beer and Wine Liquor License for the premises known and designated as 2600 High Street, Denver, Colorado, is hereby denied.

SO ORDERED this 4<sup>th</sup> day of December, 2013.

  
Judy Steele, Director  
Department of Excise and Licenses

**CERTIFICATE OF MAILING**


The undersigned hereby states and certifies that one true copy of the foregoing Final Decision was deposited in the mails of the U.S. Postal Service, certified mail postage prepaid, and emailed, on the 4<sup>th</sup> day of December, 2013 to the following:

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Dept. of Excise and Licenses

INC ACADEMY