

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

---

**FINAL DECISION**

---

**IN THE MATTER OF THE APPLICATION OF MAT-DENVER, LLC, DOING  
BUSINESS AS THE MATADOR, FOR A HOTEL AND RESTAURANT LIQUOR  
LICENSE FOR THE PREMISES KNOWN AND DESIGNATED AS 3496 WEST 32ND  
AVENUE, DENVER, COLORADO**

---

Procedural History

This matter came to hearing on April 8, 2013, pursuant to an application and prior notice filed by Mat-Denver, LLC, doing business as The Matador ("Applicant"), for a hotel and restaurant liquor license for the premises known and designated as 3496 West 32nd Avenue, Denver, Colorado.

Following the hearing, Hearing Officer Kimberley A. Chandler issued a Recommended Decision on April 12, 2013 ("Recommended Decision"), recommending approval of the license application based on the evidence and testimony presented.

The Director issued a Scheduling Order on April 15, 2013, allowing parties in interest to file objections to the Recommended Decision by April 22, 2013.

Between April 12th and April 22nd, the Director received over two dozen written objections to the Recommended Decision, and four submissions in support of the application.

On April 25, 2013, the Applicant, through its legal counsel, filed a response to the objections to the Recommended Decision.

Findings and Conclusions

At the outset, the Department recognizes and appreciates the high level of interest and engagement of residents, neighborhood organizations and other stakeholders in this hearing process. This participation was demonstrated by the sheer volume of petition signatures and thoughtful written submissions.

As the local liquor licensing authority, the Department must balance legitimate neighborhood concerns with the legal standards for approval or denial of a liquor license, as set forth by the Colorado Liquor Code and applicable case law. The standards for a "needs and desires" liquor license application hearing are well settled under state law.

Importantly, there is not a mathematical formula for determining whether an applicant has met its burden to prove that the neighborhood residents and business owners or managers of the designated area need and desire that a liquor license be issued. *See* C.R.S. § 12-47-301(2)(a). Therefore, while the number of existing licensed outlets in the designated area may be persuasive, it does not alone determine the outcome. Similarly, the number of signatures for or against the issuance of a liquor license may be indicative of the desires of the neighborhood, but is not alone controlling.

Here, the Applicant presented signatures of a significant number of residents and business owners or managers in support of the application. *See* Applicant's Exhibit A-2. Parties in opposition also submitted a large number of signatures in opposition to the application. *See* Protestors' Exhibits P-2, P-3, and P-4. Although there were many more signatures in support of the application than opposed to it, that fact alone does not determine the outcome. The Department recognizes the effort required for residents and neighborhood groups to circulate petitions and gather signatures.

The record indicates that the Applicant and the West Highland Neighborhood Association ("WHNA") held discussions and negotiations prior to the hearing, with the intention of entering into a Good Neighbor Agreement ("GNA"). It appears that the two parties agreed on several aspects related to the proposed operation of the new business, with the major exception of the hours of operation. The failure to reach agreement on this point was perhaps the most commonly cited grounds for opposing the license application.

The Colorado Liquor Code, however, dictates the hours of operation of liquor-licensed establishments. Hotel and restaurant licensees may serve alcohol until 2:00 a.m. Aside from disciplinary matters or renewal proceedings for good cause, the Department does not unilaterally impose restrictions on legal hours of liquor license operation.

The Department encourages applicants and neighborhood organizations to enter into GNA's or other arrangements. There is no legal requirement, however, that applicants must enter into one. When parties do enter into a GNA, the Department retains a copy of the agreement in the licensee's permanent file. Further, if the parties agree to certain conditions as described below, the Department will attach the conditions or restrictions to the license. Unfortunately, the parties were not able to come to an agreement here.

Although this was a closely contested matter, the Hearing Officer found that the "needs and desires" evidence ultimately weighed in favor of the Applicant, and that the Applicant met its legal burden. In the Department's quasi-judicial proceedings, the Director must substantially defer 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.

Upon review of the entire record, including the many thoughtful post-hearing submissions, the Director finds no legal grounds to overturn the Hearing Officer's findings or recommendation.

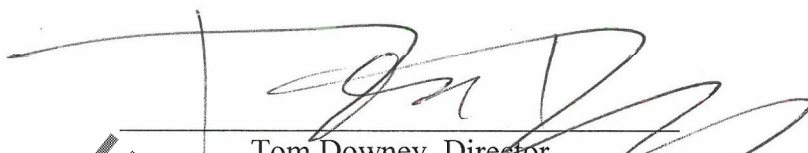
The Director is encouraged at the prospect of the Applicant, residents and business owners, and neighborhood organization continuing to work together. The Director strongly encourages the

parties to enter into a GNA or other mutual agreement to best serve the neighborhood moving forward. The Department can facilitate mediation or further discussions if the parties desire.

Finally, if the parties reach agreement on specific conditions that are (1) legal, (2) enforceable, and (3) displayable, the Department will attach the conditions to the license. Such conditions may be submitted to the Department in writing at any time in the future.

For the foregoing reasons, the application of Mat-Denver, LLC, doing business as The Matador, for a hotel and restaurant liquor license for the premises known and designated as 3496 West 32nd Avenue, Denver, Colorado, is hereby approved.

SO ORDERED this 30<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
Tom Downey, 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/or emailed on the 1st day of May, 2013 to the following:

H. Alan Dill  
Dill Dill Carr Stonbraker & Hutchings, P.C.  
455 Sherman Street, Suite 300  
Denver, CO 80203  
alan@dillanddill.com

Dan Douglas  
Assistant City Attorney  
201 West Colfax Ave., Dept. 1207  
Denver, CO 80202  
daniel.douglas@denvergov.org

Joshua Laipply  
Joshua.laipply@gmail.com

Dan Schachtner  
dan@westhighlandneighborhood.org

  
\_\_\_\_\_  
Dept. of Excise and Licenses