

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

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**RECOMMENDED DECISION**

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**IN THE MATTER OF THE APPLICATION OF TEX RESTAURANT GROUP, LLC, D/B/A BROWN DOG HANDCRAFTED PIZZA, FOR A HOTEL AND RESTAURANT LIQUOR LICENSE FOR THE PREMISES KNOWN AND DESIGNATED AS 1001 S. GAYLORD STREET, DENVER, COLORADO.**

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This matter was presented for hearing on Monday, June 13, 2011 pursuant to an application and notice filed by TEX RESTAURANT GROUP, d/b/a BROWN DOG HANDCRAFTED PIZZA (Applicant) for a Hotel and Restaurant Liquor License for the premises known as 1001 S. Gaylord Street, Denver, Colorado.

**Findings of Fact**

The Applicant appeared and was represented by Mr. H. Alan Dill, Esq. The licensing authority was represented by Assistant City Attorney John Poley. Protestants appeared and were represented by Mr. Mike Schneider, Esq.

The Assistant City Attorney, Protestant and Applicant stipulated to the following exhibits:

Exhibit A-1: Proposed menu of Applicant

Exhibit A-2a: Receipt for Applicant's Pre-filed Petitions

Exhibit A-2b: Petition Summary of petitions completed by Oedipus, Inc, showing 184 residential signatures and 60 business signatures in support of the Applicant

Exhibit A2c: Petitions

Exhibit A2d: Petitions

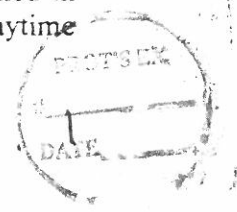
Exhibit A2e: Petitions

Exhibit A-3: Petitions circulated by Applicant with 235 signatures in support of the Applicant

Exhibit A-4: Good Neighbor Agreement with Washington Park East Neighborhood Association, a Registered Neighborhood Organization

Exhibit C-1: Publisher's affidavit showing that notice of the hearing was published in the *Daily Journal* on May 31, 2011 (a previous notice for a daytime hearing was not entered)

P-C  
EX-C



- Exhibit C-2: Neighborhood map of the designated area
- Exhibit C-3: List of Liquor Licenses in the Designated Area: Hotel and Restaurant (8), Tavern (1) Beer & Wine (2) Liquor Store (1)
- Exhibit C-4: Posting Affidavit showing Compliance checks by the licensing authority's inspectors of the Notice of Posting showing checks on May 31 and June 6, 2011
- Exhibit C-5: Detailed floor plan for the premise upstairs

**The following Exhibits were entered into evidence by Protestants:**

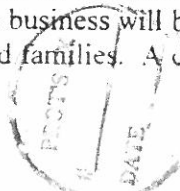
- Exhibits P-1-15: Pre-filed Petitions in opposition to Applicant
- Exhibits P-16-18: Non Pre-filed Petitions in opposition to Applicant, accepted after testimony and Voire Dire
- Exhibit P-B: Letter from Applicant to neighborhood
- Exhibit P-D:
- Exhibit P-G:
- Exhibit P-I:
- Exhibit P-J: Document addressing seating capacity
- Exhibit P-F: By-Laws of Washington Park East Neighborhood Association

**Neighborhood Needs and Desires**

The City has issued a total of 8 Hotel and Restaurant Liquor licenses in the designated area, one (1) Tavern Liquor License and two (2) Beer and Wine Liquor Licenses. (Exhibit C-3). A total of three residents testified individually in support of the Applicant and 35 residents appeared and testified En Masse in support of the Applicant. A total of four residents testified individually in opposition to the granting of this license and 45 residents appeared and testified En Masse in opposition to the granting of this license. One Registered Neighborhood Organization (RNO) appeared in support of the Applicant. A total of 479 signatures were offered in support of the application. A total of 331 signatures were offered in opposition to the application.

**Business Operations Witnesses**

Applicant is an LLC, and Mr. Giles Flanagan is a managing member of the company. He was present and testified on the company's behalf. He has not previously owned a business that sold alcohol but has partners with a similar business in Telluride, Colorado who have had a liquor license for the last six years with no violations. He has no involvement in the Telluride business. He testified that the business will be designed as a family style pizzeria, with an emphasis on healthy food and families. A children's menu



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will be available, along with craft beer. He will have all employees who manage alcohol certified by a responsible alcohol vendor program should the license be issued. The business is currently not open. He has attempted to meet with concerned neighbors, and has attempted to go thru the city's mediation process. He stated that there will be no alcohol contests or promotions and the business will offer something different in the neighborhood to a different demographic because of the lack of variety in the South Gaylord neighborhood. He believes that the license is crucial to the success of the business venture. He believes that there is a need in the neighborhood because of the unique offering of the business. There is no other similar restaurant in the designated area. It will be within walking distance of many in the neighborhood. He has a personal desire that the license be issued. He believes that the food offering and atmosphere will be unique in the neighborhood, and that the patrons want to enjoy an alcoholic drink with their pizza

Under cross examination he stated that there was an availability of alcohol at other locations in the designated area and that it was not difficult to get a drink at the other locations.

#### Supporting Witnesses

1. Mr. Raphael Martorello testified as a resident and business owner in the designated area. He has lived at 1043 Vine Street for four years and owns a home based business there, Lotus Group Advisors. He is familiar with the designated neighborhood and believes there is a need and desire in the area for this type of restaurant and license. He supports the applicant because it provides a place to go with children and there are not enough such places in the area with good food and family activities. He has a personal desire that the license be issued. He believes it will have a positive effect on the health, safety welfare and morals of the neighborhood.

Under cross examination he stated that he desired a place where he could have pizza and a drink option. He believes the license is important for business survival in the area and he has been to businesses in the area and been unable to be seated due to crowding.

2. Mr. John McNamara testified as a business owner and resident in the designated area. He resides at 525 S. Vine Street and is a licensed attorney practicing out of 1035 S. Gaylord Street. He has been in the designated area for 60 years. He testified that other businesses only give lip service to being a family friendly business and has seen families turned away because a business is too busy to accommodate them. He believes that Applicant will offer a different atmosphere, without an encouragement to drink alcohol. He has a personal desire that the license be issued and does not believe it will have any negative impact on the health, safety welfare or morals of the neighborhood.

Under cross examination, Mr. McNamara stated that although other restaurants in the area can be quite crowded, he has always been able to get an alcoholic drink and believes that there is an adequate supply of alcohol in the area.

3. Mr. Tim Harris testified as a resident of the designated area. He has resided at 1018 South Vine Street for one year but been in the area for five years. He testified that he prefers not to patronize bar-like settings, but likes to have a drink with his meal. He has spoken with the owners and believes that there is a need in the neighborhood for this



license and has a personal desire that the license be issued. He believes that it will have a positive effect on the health, safety, welfare and morals of the neighborhood.

Under cross examination he stated that there is no limit to the number of liquor licenses that should be allowed in a neighborhood, and that he has been unable to get a drink in some businesses because of the crowding.

4. Mr. Gilbert Gonzales testified as the President of Washington Park East Neighborhood Association, a Registered Neighborhood Organization. A board meeting was held and given the concerns of the many neighbors regarding this license, the board voted to enter mediation. No agreements were reached during the mediation. 200 emails were sent to members regarding the mediation. Subsequent to the mediation, another board meeting was held on April 12, 2011, and six members were present, which constituted a quorum. Four voted to support the signing of a Good Neighbor Agreement, one voted to oppose and one voted to abstain.

Under cross examination, Mr. Gonzales acknowledged the board did not try to contact all of its members. Membership is based upon dues, and there are approximately 375 dues paying members. Only two (2) members attended the mediation session. Subsequent to the mediation and prior to the board's vote on the Good Neighbor Agreement, no further effort was made to notify other members.

#### En Masse Testimony in Support

After Voire Dire, the testimony of 35 residents of the designated area was taken, all of whom were in support of the Applicant.

#### Opposition Witnesses

1. Ms. Renee Krause testified as a resident and business owner in the designated area. She has resided at 964 S. Gaylord Street for ten years and also has an Insurance business in the area. She testified that a 190 seat restaurant will add to the congestion and amount of trash and debris that will be in the area. Crime, speeding and parking problems are just some of the issues that will arise. She believes that the granting of this license will have a negative impact on the health, safety, welfare and morals of the neighborhood and does not want the license to be granted.

2. Ms. Jane Lawnhurst testified as a resident of the designated area. She has resided at 994 S. Gaylord Street for 28 years. She testified that it was her initial understanding that Applicant was going to be a sports bar, and it has become the business plan to be a family oriented restaurant. She believes that the parking, trash and traffic will bring unwanted problems to the neighborhood. She has often cleaned up liquor bottles from her yard. She stated that the area is already very busy and congested and will negatively impact the quality of life and the safety of the neighborhood. The expected patio that will seat 100 customers which faces neighborhood homes will adversely impact the neighborhood. She has never had difficulty obtaining a drink from any of the licensed businesses in the area. She does not want the license to be granted.

Under cross examination she acknowledged that she did not protest the package liquor store in the neighborhood.



3. Mr. Mike Schneider testified as a resident of the designated area. He has resided at 1100 S. Vine Street for 22 years. He stated that the availability of alcohol in the area is sufficient, and even exceeds the demand. He believes that there is no need in the area for this license and that the licensed establishments are sufficient to meet the needs of the neighborhood. Additionally, public safety issues and parking concerns will manifest if the license is issued.

4. Ms. Susan Scott Floyd testified at her own request as a resident of the neighborhood. She has lived at 1064 S. York Street for 66 years. She stated that the influx of bars and liquor licensed establishments has negatively impacted the health, safety, welfare and morals of the neighborhood.

### **En Masse Testimony in Opposition**

After Voire Dire, the testimony of 45 residents of the designated area was taken, all of whom were in opposition to the granting of this license.

### **CONCLUSIONS OF LAW AND RECOMMENDATIONS**

1. Colorado law requires that the local licensing authority post and publish the public notice of the hearing on an application for a liquor license "not less than ten days prior to such hearing." C.R.S. Sec. 12-47-111(1). The City of Denver, Department of Excise and Licenses ("Department") additionally requires the applicant to post notice of the public hearing for a period of 20 days prior to the hearing. The evidence shows that the Colorado statutory requirements were met. The evidence additionally shows that (a) the applicant complied with the Department's policies and procedures, and (b) actual notice of the application for a license was posted for more than 20 days prior to the hearing. Therefore, I conclude there has been compliance with the notice requirements for the hearing.

2. There was significant neighborhood opposition to the granting of this license as well as significant support for the license. A total of three residents testified individually in support of the Applicant and 35 residents appeared and testified En Masse in support of the Applicant. A total of four residents testified individually in opposition to the granting of this license and 45 residents appeared and testified En Masse in opposition to the granting of this license. One Registered Neighborhood Organization (RNO) appeared in support of the Applicant. A total of 479 signatures were offered in support of the application. A total of 331 signatures were offered in opposition to the application.

3. The RNO has approximately 375 paying members and did not notify all of its members of its intention to undertake mediation with Applicant, nor did it undertake any effort to do so. It did not make any effort to notify any member after mediation concerning its intention to vote to support the GNA. Of the six members who voted, four were in favor of supporting the GNA. The Hearing Officer specifically finds that no adequate notice was provided to the RNO members; therefore the four members of the board did not have the authority to bind the organization by their vote. No weight will be given to the testimony of support of the RNO.

4. Four witnesses testified on behalf of the Applicant, including the managing member. Two stated that they had never had difficulty obtaining a drink in the designated area, while two said that had been unable to get in a restaurant to have a drink





or meal. The testimony centered on the uniqueness of the business model of Applicant. There was minimal testimony regarding the needs of the neighborhood for another licensed liquor establishment. Even though a significant number of residents either testified or signed petitions in support of the Applicant, the Colorado Courts have clearly stated that being in favor of a license does not demonstrate a need for the license. Further, while the number of signatures in favor of the application exceeds those in opposition, the courts are again clear that while the petitions may seem to constitute an accurate reflection of the desires of the inhabitants, this expression of opinion is not controlling as regards the requirements of the neighborhood.


5. The testimony and Exhibits of Protestants provide a picture of a neighborhood that has a sufficient number of licensed outlets to currently satisfy the needs of the neighborhood and traveling public. This recommendation does not speak to any over-concentration of licensed establishments in the designated area, but purely relies on the finding that the needs of the neighborhood are currently being met. \*

6. Applicant has NOT sustained its burden of showing that (a) there is a need for the applied-for Hotel and Restaurant Liquor License at the establishment known as TEX RESTAURANT GROUP, d/b/a BROWN DOG HANDCRAFTED PIZZA for the premises known as 1001 S. Gaylord Street, Denver, Colorado in order to meet the reasonable needs of the neighborhood.

7. No findings are made regarding (b) the desires of the residents of the designated neighborhood regarding the requested license being issued, or (c) what impact the license may have on the health, welfare, safety or morals of the neighborhood.

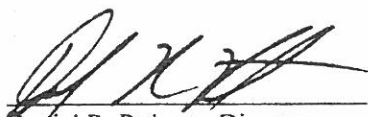
**THEREFORE, it is recommended that the license application be DENIED**

**Recommended this 27<sup>th</sup> day of June, 2011**

  
Dante J. James  
Hearing Officer

After reviewing the evidence as summarized above, the foregoing Recommended Decision for the denial of a Hotel and Restaurant Liquor License at the establishment known and designated as TEX RESTAURANT GROUP, d/b/a BROWN DOG HANDCRAFTED PIZZA for the premises known as 1001 S. Gaylord Street, Denver, Colorado, is hereby tentatively accepted. Parties in interest have ten (10) days from the date below to file objections.

ISSUED this ~~27<sup>th</sup>~~ <sup>11<sup>th</sup></sup> day of ~~June~~ <sup>July</sup>, 2011

  
Daniel R. Roberts, Director  
Department of Excise and License



C.6.

CERTIFICATE OF MAILING

The undergoing hereby certifies that on the 12<sup>th</sup> day of July, 2011, one true copy of the foregoing Recommended Decision was deposited in the mail of the U.S. Postal Service, postage prepaid, or sent by Electronic Mail, addressed to the following:

H. Alan Dill, Esq.  
Dill Dill Carr Stonbraker & Hutchings  
455 Sherman Street #300  
Denver, CO 80203

CERTIFICATE OF INTER-OFFICE MAILING

The undergoing hereby certifies that on the 12<sup>th</sup> day of July, 2011, one true copy of the foregoing Recommended Decision was sent by inter-office mail to the following:

John Poley, Assistant City Attorney  
City & County of Denver  
Department of Law, 12<sup>th</sup> Floor  
201 West Colfax Avenue  
Denver CO 80202

  
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License Technician