

LICENSE HEARING MINUTES
The Black Hart of Saint Paul, Business Address University Avenue W.
Thursday, September 13, 2018, 1:00 p.m.
Room 330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 12:59 p.m.

Staff Present: Kristina Schweinler, Department of Safety and Inspections (DSI)

Licensee: Wes Burdine, Applicant/Owner

License Application: Liquor On Sale - 101-180 Seats, Liquor On Sale - Sunday, Liquor On Sale - 2 AM Closing, Liquor Outdoor Service Area (Sidewalk), Entertainment (B), Gambling Location, Cigarette/Tobacco

Other(s) Present: Tom Goldstein, neighbor; Dan Buck, neighbor

Legislative Hearing Officer Nhia Vang explained that a hearing had already been conducted and the license approved by the City Council, but, due to an omission in practice, Mr. Goldstein was not notified of the hearing, so a second hearing was being held so that he could provide testimony. She said at the conclusion of the hearing she would make a determination as to whether she would be affirming or modifying her original recommendation.

License conditions:

1. Each year prior to the placement of table(s) and/or chair(s) in the public right-of-way (i.e., sidewalk), the licensee agrees to obtain a new Obstruction Permit from the Department of Public Works. Licensee agrees to maintain the sidewalk café in accordance with the conditions placed on an approved Obstruction Permit, acknowledges that an Obstruction Permit is effective on April 1 and expires on October 31 of each year, that table(s) and/or chair(s) may not be placed in the public right-of-way before or after the effective/expiration dates, and that a failure to comply with this condition will result in adverse action being taken against all of their licenses.
2. Licensee agrees to limit the placement of seating on the public sidewalk to the area and number of seats shown on the approved sidewalk seating plan on file with the Department of Safety and Inspections (DSI) and Public Works.
3. Licensee agrees to take appropriate action(s) to ensure that the sale, display, and/or consumption of alcoholic beverages is contained within the defined area as per the approved sidewalk seating plan on file with DSI.
4. Licensee will provide sufficient security to insure an orderly exit of patrons at bar close. Security will be clearly identifiable.
5. Staff will insure that the 48" clear walkway is maintained at all times.
6. Licensee will create a video surveillance camera and lighting placement plan (video surveillance plan) for the interior and exterior of the licensed premises. Licensee will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In

accordance with the approved video surveillance plan, licensee will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. Licensee will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, licensee shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, Licensee shall have the technology, materials and staff available to immediately make the copy. In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours.

7. Licensee agrees to complete installation of all video surveillance equipment and lighting in accordance with the approved SPPD video surveillance plan on file with DSI within sixty (60) days of license issuance.

Minutes:

Tom Goldstein said Ms. Vang's acknowledgement that the proper notice was not given was the first acknowledgement that had been made that notice was not given. Ms. Vang explained the error and said she was not aware at the time of the original hearing that Mr. Goldstein had not been notified. She said the conditions proposed by Mr. Goldstein were discussed at that time.

Mr. Goldstein asked whether the re-hearing was a real hearing or just for show. He said he found it hard to believe the City would place additional conditions on a license that had already been granted. Ms. Vang said that if Mr. Goldstein provided evidence to support his recommendations she would consider them.

Mr. Goldstein said he appreciated the acknowledgment that notice should have happened and would leave that issue alone. He said he had concerns about statements made by DSI staff at the July 2 hearing that he felt were inaccurate and possibly misleading, and suggested a bias for the applicant. He objected specifically to Ms. Schweinler's comment about the bar not being in a residential neighborhood because the entrance faced University Avenue. (Ms. Schweinler responded by stating that the business was in a B2 zone.)

Mr. Goldstein said it was not a credible statement that a business that backed up to houses on Sherburne Avenue and relied on city streets for parking was not a neighborhood bar. He said by that rationale, no bars on Grand Avenue were neighborhood bars and O'Gara's on Snelling was not a neighborhood bar. He said he didn't feel the comment was appropriate for getting at the concerns he raised and made him wonder whether the effort was to safeguard the interest of neighbors or just to ensure the efficient and smooth opening of a new bar. He said he also objected to Ms. Schweinler's statement (during the July 2 hearing) that the conditions for Tav on the Ave were similar, which he said was categorically untrue. He read the Tav on the Ave license conditions which were not also proposed for The Black Hart, specifically related to security and exit of patrons at bar closing. He acknowledged that there was a security presence at The Black Hart but said he disagreed that condition 4 of the application by Black Hart would not be applied every day; he referenced a statement by Ms. Schweinler at the previous hearing. He said he lived around the corner and when there was overflow parking in his neighborhood - which he said had

gotten less since the light rail - he was affected by noise from exiting bar patrons. He said calling the police was not a solution because it was not a priority for the police to get there quickly unless there was violence. He said no effort was being made to encourage departing customers to be quiet. He said when he spoke to the previous owner about conditions, she said they were not her patrons or suggested Mr. Goldstein should not have bought a house near a bar. He said he found it ironic that, despite his letter of objections, DSI submitted its conditions affidavit on June 22, ten days prior to the hearing date, and no changes were made. He noted that the conditions affidavit for Tav on the Ave was submitted the day of the hearing. He said a letter was sent to Mr. Burdine on May 7 with a list of requirements to be met for issuance of an on-sale liquor license; he asked whether those conditions were met. He said failing to notify parties about a hearing, which was basic due process, made him question whether all the 't's had been crossed and the 'i's dotted about whether requirements had been met.

He said he'd also like to address his concerns about whether Mr. Burdine had the necessary experience for successfully owning and operating a bar on University Avenue that would cater to sports fans not known for being docile or timid. He said Mr. Burdine had stated at the July 2 hearing that he had over 15 years of food service experience in a variety of capacities, yet Mr. Burdine's website said he was a writer, musician, and publisher. He asked how long ago Mr. Burdine's food service experience was, and questioned whether Mr. Burdine had qualifications other than being a soccer fan and having the funds to buy the business. He said more questions were asked of the new owner of Tav on the Ave hearing in spite of the fact that he was an experienced restaurateur, and he felt that was appropriate. He said there was not the same level of scrutiny for Mr. Burdine, and if the bar was not successful and another owner came in, they could end up with ongoing problems where the only recourse was to call the police.

He said the letter he sent to DSI included a copy of a Facebook comment by Mr. Burdine, and he wondered why there was no further inquiry about that. He said it seemed relevant regarding Mr. Burdine's character and whether he was going to be respectful towards concerns of neighbors or able to deal with an unruly patron. He said the Facebook post had been removed, but Mr. Burdine had not apologized, which told him that Mr. Burdine stood by his comment.

Mr. Goldstein said he did not agree that the bar had a long-standing relationship with the neighborhood; rather, it was a long-standing proximity in the neighborhood. He said the former owner had not had contact with the neighborhood other than, many years before, gathering signatures to allow tables on the sidewalk so patrons could smoke outdoors. He said he had been unwilling to sign the petition because he was involved in smoking cessation activities, and the previous owner took great offense. He reiterated that the previous owner always denied problems were being caused by patrons from her bar, but she couldn't know that because no one from the bar was out in the neighborhood monitoring behavior. He has was in a unique situation with two empty lots in front of his house and two empty lots on the corner of University and Albert, so there was nothing to shield him from the noise. He said Mr. Burdine's comments didn't give him much faith that anything would be different at the bar. He said he had a retail store on Grand Avenue for many years and understood that his customers were the most important thing and he treated everybody respectfully. He said Mr. Burdine stated he lived in the neighborhood, but in fact lived five blocks away, where he was not affected by the noise and activity. He said most of the neighbors didn't have the same sound issues affecting them, but some of the conditions he

was requesting, specifically about not dumping bottles at 2:00 a.m., came to him from another neighbor. He said he hadn't heard it lately, but it was happening as recently as a year ago. He said he would accept the explanation that the garbage trucks going down the alley at 5:30 a.m. weren't stopping there. He said he felt his conditions were small requests and he wanted to see something at the front end to ensure the neighbors weren't the recipients of all the noise if the bar became more successful with the opening of the stadium. He said he didn't feel the current conditions did enough to protect the neighborhood character and ensure a reasonable co-existence.

Ms. Vang said she was going to give DSI staff and Mr. Burdine a chance to respond to Mr. Goldstein's testimony. The discussion ensued as follows:

Ms. Schweinler said the license was reviewed by DSI and approved. She said it was B2 zoning, and the business was a bar and had been a bar for over 40 years, and was approved by Zoning. She said it had been inspected by both Building and Fire, and had been approved by DSI licensing. In response to a question from Ms. Vang, she said Mr. Burdine had met all the requirements in the letter dated May 7th.

Mr. Goldstein responded that it had been a bar for 40 years, but when a license came up for change, that was the opportunity to address issues. He said he didn't believe DSI had had any involvement because once they signed off, they would not get involved with noise complaints or other issues. He said this was an opportunity for the City to do some things like it did with Tav on the Ave, but chose not to do here.

Ms. Schweinler said the video surveillance and the addition of security at the door were new conditions for the business. She said Tav on the Ave was a completely separate bar in a completely separate neighborhood. She said they also had a designated parking lot that was part of their liquor purview and they needed to control issues in the parking lot. She said Town House (Black Hart) did not have a parking lot.

Mr. Goldstein said the spillover was the same.) Ms. Schweinler said the parking lot at Tav on the Ave was private property. (Mr. Goldstein asked whether security at Tav at the Ave would be relieved of responsibility for someone parked five feet from the parking lot.

Ms. Schweinler said that was correct; she said bars were not required to enforce things happening outside of their property.

Mr. Burdine said they couldn't; he said workers' compensation would not cover employees who were outside the property.

Ms. Schweinler said residents should be calling the police for behaviors happening out in the neighborhood.

Mr. Goldstein said there was a very different security arrangement when off-duty police officers were hired.

Ms. Schweinler said the hiring of security were arranged by the license holder and not required by the license. She said they did put conditions on regarding what security personnel were required to do, and she believed those conditions were present on this license.

Mr. Goldstein said he was referring a condition applying to the people who provided the security; he said he could be hired as security there.

Ms. Schweinler said that was correct.

Mr. Goldstein said he didn't think he had the training.

Ms. Schweinler said they (DSI) required that the business hire security and they gave designation as to what that security should be doing.

Mr. Goldstein said that was DSI policy but nothing prevented them from requiring credentialed security personnel. He said he didn't expect the bar to police City streets, but if the bar was just releasing patrons out into the neighborhood and hoping they left, to him that was a problem because the neighbors would have to deal with them. He said this was an unusual arrangement where there was a gay bar combined with soccer, and how they managed those two different things, which he didn't think were necessarily compatible.

Mr. Burdine said the previous day they had had a soccer party with over 60 people present from 6:30 to 8:30 p.m. watching a game, and at 9:00 or 9:30 there was a drag show. He said everything went perfectly and there were no complaints.

Mr. Goldstein said the previous day there were no issues he was aware of.

Ms. Vang said she would like an update from Mr. Burdine. She asked whether there had been any problems or any complaints submitted to the City in the two weeks he'd been open. Mr. Burdine said there had been no issues. He noted the letter of support from a neighbor that had been submitted, and said that neighbor lived behind the bar and had never had any issue with the bar.

Mr. Goldstein said the stadium didn't open yet until next year and what was happening now could be very different. He said if that happened, the City couldn't come in and add additional conditions.

Ms. Vang asked Ms. Schweinler whether the City had, on occasion, added conditions after a license had been issued, to help a licensee manage their business better. Ms. Schweinler said they had on many occasions. In response to further questions from Ms. Vang she described the process and circumstances under which that could happen.

Mr. Goldstein said the noise and issues out in the neighborhood that he was concerned about would be covered by this license and not require additional conditions. He asked whether the mere posting of a sign to make patrons aware they were exiting into a residential neighborhood and asking that they be respectful was too much of a burden to put on the bar. He said he felt it

was a pretty small ask, and the fact that it wasn't even considered, to him went to the issue of how objective DSI was.

Ms. Vang asked Ms. Schweinler whether DSI reviewed licenses on a case by case basis or automatically treated them all the same. Ms. Schweinler said they were handled on a case by case basis. Ms. Vang said some bars might have more conditions based on past behavior. She asked Ms. Schweinler whether there had been anything in the past behavior of the bar Mr. Burdine was taking over that would warrant adding these kinds of additional conditions. Ms. Schweinler said she didn't recall any complaints being filed for the past owner or since Mr. Burdine has taken over. Mr. Goldstein asked again whether the mere posting of a sign was an unreasonable burden. Ms. Schweinler said posting a sign didn't guarantee it was going to be enforced. Mr. Goldstein said he agreed and that's why he was asking for more than a sign, including someone present to ask people not to loiter. He said there was nothing there. Ms. Schweinler said condition 4 required sufficient security to insure an orderly exit of patrons at bar close, and that security be clearly identifiable. Mr. Goldstein said, according to Ms. Schweinler's earlier statement, their responsibility ended when patrons left the bar. Ms. Schweinler said they only had the authority to move people off the property that they controlled. Mr. Goldstein said they did have the ability to post signs.

Ms. Vang said she understood Mr. Goldstein's concern. Ms. Schweinler said the existing condition covered the concern. Mr. Goldstein said there was no enforcement mechanism for ensuring the bar was complying. Ms. Schweinler said DSI often went out to check to make sure security was present and also received information from the police department about whether it was happening. Mr. Goldstein said that Walmart regularly resurfaced its parking lot without notice to the neighborhood, and the condition had been reported to DSI but continued to exist. Ms. Schweinler said they didn't license Walmart. Mr. Goldstein said, according to the police department, DSI was the department that dealt with the need for variances if someone was going to be running machinery at midnight to resurface a parking lot. Mr. Burdine asked if that was relevant. He said he had taken the afternoon off from his second job to be present. Mr. Goldstein said that was for the hearing officer to decide. Ms. Schweinler said she wasn't going to talk about Walmart. Ms. Vang said she wanted Mr. Burdine to have a chance to respond to what Mr. Goldstein had said.

Mr. Burdine referenced the letter submitted by Mr. Goldstein as containing blatant falsehoods. He said the claim about garbage haulers was easily checkable and he had a list of service dates and times. He said they came at 11:30 a.m. on Mondays and had been the same for years. He said it had been the policy of the bar for decades to not empty bottles at 2:00 a.m., but they were emptied late morning or at bar opening at noon or 3:00 p.m. He said the entire letter was built on falsehoods and things not supported by evidence. He said security out in the neighborhood was not possible because of workers compensation laws. He said the bar had been an integral part of the community for 40 years as the oldest gay bar in St. Paul, and the idea that it hadn't contributed to the community was an insult. He said he did live in the neighborhood about four blocks away and knew many bar patrons who lived in the neighborhood. He said it was a vital part of the community and would continue to be. He said the reason he found the additional conditions to be unreasonable is because they were built on evidence-less fictions. He said they went to great lengths to make sure the bar is different from other bars and was a positive place to

be and was respectful. He said the addition of video surveillance cameras was somewhat of a financial burden but was something he understood as being necessary for the security of the patrons and the bar, and a reasonable request to help cut down on any incidents.

Ms. Vang asked for a copy of the garbage hauler schedule. (Schedule was accepted and made part of the record.)

Mr. Goldstein said he had acknowledged his error about trash service, but it was based on what he saw and would not be considered that a deliberate falsehood. He said the notion that glass has never been dumped at 2:00 a.m. for decades was categorically untrue; he said Mr. Burdine had only lived in the neighborhood for two years. Mr. Burdine said he had spoken to all of the employees about it. Mr. Goldstein said he lived there and had heard it, and had talked to other neighbors. He said he felt all his concerns were being discounted but the noise and other issues were real and the bar was being spared from having to do anything about it. He said Mr. Burdine had only operated the bar for two weeks and had not experienced the kind of crowds there might be when the stadium opened. He said he'd love for the bar to be a success and didn't have any ill will about the bar's success. He said the previous owner had never done anything specifically other than pay taxes. He said the fact that people went to and liked the bar didn't mean they were contributing anything special to the neighborhood. He said when he had his retail store, he gave to every charitable endeavor, gave out gift certificates, and was very active in supporting local organizations because it was good for business. He said he hadn't seen any evidence of that from the bar. Mr. Burdine said there were weekly fundraisers for the Aliveness Project, there was a large fundraiser coming up for Avenues for Homeless Youth. He said if Mr. Goldstein had taken a second to research before making baseless claims. He said this (referring to Mr. Goldstein's letter) was being dismissed because he was making claims with no evidence. Mr. Goldstein said he was talking about the neighborhood and not about the city in total.

Ms. Vang said they had to give Mr. Burdine a chance to operate, and there was a system in place so that if something happened and he mismanaged the business, residents such as Mr. Goldstein had the ability to contact the City, and the City would inspect to see if additional conditions were warranted. Mr. Goldstein said his expectation was that his letter would come in and Mr. Burdine would reject some of the conditions and agree to others. He didn't expect to be present in a divisive hearing. He said that wasn't his intent, but there was no notice and the hearing took place, and not one word changed in the conditions he made. Ms. Vang said there had to be information to support the conditions she recommended, and as of that time, she hadn't seen any evidence to support the conditions he was proposing. She said she was not discounting what Mr. Goldstein was saying. Mr. Goldstein asked again about a sign. Ms. Vang said they could talk about whether that would be possible and thanked him for his testimony but she would like to invite Mr. Buck to provide his testimony.

Dan Buck said Midway has improved in the years he'd been there, and of all the issues they'd faced over the years, the Town House had not been a problem. He said the business had done a lot to support the LGBTQ community, which was very important to many people in the Midway. He said in Mr. Burdine they had a man who moved into the neighborhood, bought a business in the neighborhood to keep it locally owned, and was investing in neighborhood development. He said they lived in a densely populated urban setting, and there was noise and always had been.

He said at 2:00 a.m. last call he had people coming down Hamline from the light rail. He said there'd been a lot of positive change in the neighborhood and he believed Black Hart was going to continue that. He confirmed with Mr. Burdine that he had kept on the whole staff. He said noise was the price of living in the city, and if Black Hart was to be expected to walk people to their cars, then other bars should be expected to do it too. He said it just couldn't be done. He said he thought it was fantastic that Mr. Burdine wanted to do this and a lot of people were supportive and believed in what Mr. Burdine was doing. He said it was not fair to say to Mr. Goldstein that he shouldn't have bought a house next to a bar. He said the Midway was growing and developing, and other bars had shuttered, including a couple that were problems. He said they knew Black Hart wasn't that. He said if they wanted to talk about all of the problems in the Midway this was not one of the issues they should be dealing with. He said Mr. Burdine had put his own livelihood on the line, and had met the conditions set out by the City. He said if the sign was the issue, he'd buy a sign, but the people who left the bar were adults and knew they were exiting into a neighborhood, and a sign wasn't going to deter someone from making noise.

Ms. Vang then read from a letter in support that was received on September 12, 2018.

Mr. Goldstein said since light rail had come in, the more egregious incidents had gone away and he didn't want it to go back. He read the end of his letter which stated that he hoped The Black Hart would be successful, but just wished to see them be respectful of the neighbors. He reiterated his concerns related to the Facebook comment and said all he was asking for was a sign.

Ms. Vang closed the public hearing.

Ms. Vang said everyone wanted Mr. Burdine to succeed, and that both Mr. Goldstein and Mr. Burdine were invested in the community. She considered Mr. Goldstein's request to place a condition where a sign would be posted to ask for patrons to be respectful. She said it was not unusual to ask for this type of condition to help with the issue of being neighborly and she asked Mr. Burdine to consider whether adding the sign would be too much of a burden. Mr. Burdine said it was not a burden, but his main objection was that they had gone through this process because of claims made about the bar with no evidence. He said the concerns were addressed in the existing conditions, and a sign would not address them. He said if they wanted to do it so someone's bruised ego could feel better that was fine. He said they could do whatever was necessary to move forward but it was his contention that a sign did nothing that condition 4 and video surveillance weren't already doing. He said there were no existing issues and they were doing this to appease something, and if that was what this body felt it needed to do, he would do whatever had to be done.

Ms. Vang said she knew there was a difference of opinion but she felt it would be a good faith effort to show Mr. Goldstein and other neighbors that he would maintain the integrity of the business that he'd been doing a great job of managing so far.

Mr. Burdine said he understood that, but there were three pieces of evidence: two people testifying that there was not a problem, and one testifying that there was. He said he was fine with good faith efforts but it was all based on the idea that one person could hold everyone

hostage by making a demand based on no evidence. He said he understood Ms. Vang's position but it was upsetting that they were trying to make one person happy for a bar that's been there for 40 years. He said Ms. Vang should make the recommendation she felt she needed to, but they knew why it was being done.

Ms. Vang said no one was going to be happy, and that Mr. Goldstein wasn't getting everything he wanted. She said Mr. Burdine had been doing a great job and she applauded him, but accepting this condition would show a good faith effort to reassure the neighborhood, including Mr. Goldstein and others who were not present. Mr. Burdine asked whether the license needed to stipulate what the sign said. Ms. Schweinler said the verbiage of the sign should come from the licensee. Ms. Vang agreed and asked Mr. Burdine to draft something that would work for her to review.

Ms. Schweinler asked Ms. Vang whether she was going to ask for this as a condition. Ms. Vang said she was. She said she would affirm the original recommendation supporting the issuance of the license with an amendment of additional language in the affidavit as shown below for condition #4:

1. Each year prior to the placement of table(s) and/or chair(s) in the public right-of-way (i.e., sidewalk), the licensee agrees to obtain a new Obstruction Permit from the Department of Public Works. Licensee agrees to maintain the sidewalk cafe in accordance with the conditions placed on an approved Obstruction Permit, acknowledges that an Obstruction Permit is effective on April 1 and expires on October 31 of each year, that table(s) and/or chair(s) may not be placed in the public right-of-way before or after the effective/expiration dates, and that a failure to comply with this condition will result in adverse action being taken against all of their licenses.
2. Licensee agrees to limit the placement of seating on the public sidewalk to the area and number of seats shown on the approved sidewalk seating plan on file with the Department of Safety and Inspections (DSI) and Public Works.
3. Licensee agrees to take appropriate action(s) to ensure that the sale, display, and/or consumption of alcoholic beverages is contained within the defined area as per the approved sidewalk seating plan on file with DSI.
4. Licensee will provide sufficient security to insure an orderly exit of patrons at bar close. Security will be clearly identifiable. Signage will be posted at the door reminding patrons to leave in and orderly fashion and not disturb the neighbors.
5. Staff will insure that the 48" clear walkway is maintained at all times.
6. Licensee will create a video surveillance camera and lighting placement plan (video surveillance plan) for the interior and exterior of the licensed premises. Licensee will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, licensee will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. Licensee will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, licensee shall make surveillance video immediately available

for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, Licensee shall have the technology, materials and staff available to immediately make the copy. In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours.

7. Licensee agrees to complete installation of all video surveillance equipment and lighting in accordance with the approved SPPD video surveillance plan on file with DSI by 11/01/2018. Licensee acknowledges that a security plan must be submitted to SPPD, approved by SPPD, and then all work completed in accordance with the approved plan prior to 11/01/2018 or adverse action will be taken against their license. No further extensions will be granted to complete the security camera work in accordance with an approved plan.

She said the license had already been issued and would remain.

The hearing adjourned at 1:59 p.m.

The Conditions Affidavit was signed and submitted on September 14, 2018.