

W. 7.a.

AGENDA COVER MEMO

AGENDA DATE: April 6, 2005

TO: Board of County Commissioners

DEPARTMENT: Board of County Commissioners

PRESENTED BY: Jeff Towery, Hearings Official

AGENDA TITLE: ORDER/ IN THE MATTER OF ADOPTING A FINAL ORDER IN THE APPEAL OF THE SHERIFF'S RECOMMENDATION ON THE LIQUOR LICENSE APPLICATION OF STEVE NELSON AND KEVIN B. HILL (KONA CAFÉ)



I. Motion

APPROVE THE BOARD ORDER ADOPTING A FINAL ORDER IN THE APPEAL OF THE SHERIFF'S RECOMMENDATION ON THE LIQUOR LICENSE APPLICATION OF STEVE NELSON AND KEVIN B. HILL (KONA CAFÉ).

II. ISSUE OR PROBLEM

Shall the Board of Commissioners adopt a final order reversing the Sheriff's recommendation to deny a liquor license to Steve Nelson and Kevin B. Hill?

III. DISCUSSION

A. Background

The applicants submitted an application for a liquor license which was reviewed by the Sheriff's Office and a recommendation to deny the application was made. The applicants appealed the decision and the Board designated a Hearings Official to hear the appeal and make a recommendation to the Board

B. Analysis

The Hearings Official held a hearing and has recommended that the Sheriff's recommendation be reversed in the Final Order in Appeal (Attachment B).

C. Alternatives

1. Adopt the Order.

2. Decline to adopt the Order.

E. Recommendations

The Hearings Official recommends that the Board support Option Number 1.

IV. IMPLEMENTATION/FOLLOW-UP

Upon Board action, the appropriate recommendation will be forwarded to OLCC.

V. ATTACHMENTS

Attachment A – Board Order

Attachment B – Hearings Official Final Order in Appeal

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF ADOPTING A FINAL ORDER
IN THE APPEAL OF THE SHERIFF'S RECOMMEN-
DATION ON THE LIQUOR LICENSE APPLICATION
OF STEVE NELSON AND KEVIN B. HILL (KONA
CAFÉ)

WHEREAS, the Sheriff of Lane County recommended disapproval of the liquor license application of Steve Nelson and Kevin B. Hill for the Kona Café; and

WHEREAS, LM 16.120(5) permits a person aggrieved by the Sheriff's recommendation, within 10 days of the date of the Sheriff's recommendation, to request a hearing to appeal the Sheriff's recommendation; and

WHEREAS, Steve Nelson made a timely request for hearing; and

WHEREAS, LM 16.120(5) provides for a hearing before the Board or its designee, and

WHEREAS, the Board adopted Order 05-3-9-19 designating that Jeff Towery would hear the appeal as the Board's designee and make a recommendation to the Board of County Commissioners; and

WHEREAS, based on criteria made applicable by statutes and the OLCC rules, the designee may recommend to the Board that the Board recommend to OLCC either approval or denial of the license application; and

WHEREAS, the hearing on the appeal was held at 2:00 p.m. on March 21, 2005; and

WHEREAS, the Hearing Official recommends that the LCSO recommendation be reversed in a Final Order In Appeal dated March 23, 2005.

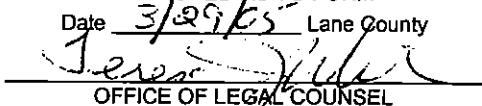
IT IS HEREBY ORDERED that the Board of County Commissioners adopts the Final Order In Appeal dated March 23, 2005, attached hereto and incorporated by reference, as its own; and

IT IS FURTHER ORDERED that that the applicant hereby receives a positive recommendation from Lane County for the liquor license.

Dated this _____ day of _____ 2005.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM
Date 3/29/05 Lane County


OFFICE OF LEGAL COUNSEL

**BEFORE THE LANE COUNTY HEARINGS OFFICIAL
FINAL ORDER IN APPEAL**

**Steve Nelson
Kevin B. Hill
4605 Main St.
Springfield, OR 97478**

DATE: March 23, 2005

Nature of Proceeding and Order:

This is an order in the appeal of the recommendation issued by the Lane County Sheriff's Office (LCSO) to the Oregon Liquor Control Commission (OLCC) to deny a liquor license application by Steve Nelson and Kevin B. Hill. The appeal is pursuant to Lane Manual 16.120. The Hearings Official has been delegated authority by the Board of Commissioners to conduct the appeal and make a recommendation to the Board that the Board recommend to OLCC either approval or denial of the license application, which recommendation may supercede that of the Sheriff.

Ruling: The Hearing Official recommends that the LCSO recommendation is reversed.

Applicable Lane Manual Section:

The LCSO relies on the following regulations:

Section 16.120(4), provides that:

"The Sheriff may recommend denial of a license application if any of the following factors exist:

- a) Failure to meet applicable land use requirements.*
- b) A felony conviction of the applicant, or any officer or director of the applicant.*
- c) Two or more misdemeanor convictions within the preceding 10 years of the applicant, or any officer or director of the applicant.*
- d) A history of involvement by the applicant, or any officer or director of the applicant, in incidents involving drugs or alcohol.*
- e) Any factor identified and explained in the Sheriff's recommendation as a risk to the public health and safety."*

Record:

- The evidentiary record in this proceeding consists of one (1) tape cassette recording of the March 21, 2005, hearing and the following exhibits:
- Letter dated February 4, 2005 from Byron Trapp, Sergeant, Police Services Division, on behalf of the Sheriff, to the applicants, informing the latter that LCSO was recommending that the OLCC deny their liquor license application.
- Letter dated February 9, 2005 from the applicants to the Lane County Board of County Commissioners appealing the denial and requesting a hearing.
- Board Order 05-3-9-19 scheduling a hearing of the appeal and designating a Hearings Official.
- Letter dated March 10, 2005 from the Hearings Official to the applicants notifying latter of the hearing.
- Lane Manual 16.100-130 dealing with License for Sale of Alcoholic Liquor.
- Handwritten notes dated March 21, 2005 from the Hearing Official.

The following witnesses testified:

Steve Nelson, Applicant
Kevin B. Hill, Applicant
Dennis Ewing, Lieutenant, Special Operations

The March 21, 2005 hearing in this matter was recorded on one (1) cassette tape, which is a part of the record of this proceeding.

Evidentiary Standard:

All findings of fact herein are made based upon the determination of the hearings officer that they are supported by a preponderance of the evidence in the formal record made at the hearing in this matter on March 21, 2005.

Findings of Fact:

1. On March 21, 2005, Steve Nelson, Applicant and Kevin B. Hill, Applicant, appeared at the time and place scheduled for the hearing.
2. The items in the record identified above have been accepted by the Hearings Official.

This decision, which is otherwise final upon adoption by the Board of County Commissioners, may be appealed by Writ of Review as provided by ORS 34.010 through 34.100.

Dated, issued, and mailed this 23rd day of March, 2005.

By: 
Jeffrey R. Towery
Lane County Hearings Official