

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

RECOMMENDED DECISION

**IN THE MATTER OF THE APPLICATION OF TAGERT, LLC, DBA TAGERT
FINE WINES FOR A RETAIL LIQUOR STORE LIQUOR LICENSE AT THE
PREMISES KNOWN AND DESIGNATED AS 2625 E. 12TH AVE., DENVER,
COLORADO**

This matter was presented for hearing on Friday, January 7, 2011 pursuant to an application and notice filed by TAGERT, LLC, DBA TAGERT FINE WINES (Applicant) for a Retail Liquor Store Liquor License at the premises known as 2625 E. 12th Ave., Denver, Colorado.

Findings of Fact

The applicant appeared and was represented by Alexander Hoffman, Esquire. The licensing authority was represented by Assistant City Attorney John Poley. Protestants were represented by Mr. Joel Judd, Esq. and Ms. Michelle Magruder, Esq. Three (3) residents in the designated area testified in support of the Applicant. 18 residents or business owners from the designated area testified En Masse in support of the Applicant. Three (3) residents testified in opposition to the granting of this license. 75 residents or business owners testified En Masse in opposition to the granting of this license. One (1) registered neighborhood association appeared in opposition to the Applicant, Congress Park Neighbors, Inc. (CPN) represented by Ms. Kathleen Hynes, CPN Secretary.

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

- Exhibit A-1: Non-Pre-Filed Petitions in support
- Exhibit A-2: Non-Pre-filed petitions in support
- Exhibit A-3: Non-Pre-Filed petitions in support
- Exhibit A-4: Map circulated with Petitions
- Exhibit A-5: Cover letter for Pre-Filed petitions
- Exhibit A-6: Postcard with notice of Congress Park Neighbors, Inc., neighborhood meeting
- Exhibit C-1(a): Publisher's affidavit showing that notice of the hearing was published in the *Daily Journal* on December 13, 2010
- Exhibit C-1(b): Publisher's affidavit showing that notice of the first, vacated hearing date was published in the *Daily Journal* on December 1, 2010

- Exhibit C-2: Neighborhood map of the designated area
- Exhibit C-3: List Liquor Licenses in the Designated Area: Hotel and Restaurant (10), Tavern (1) Liquor Store (1)
- Exhibit C-4(a): Compliance checks by licensing authority's inspectors of the Notice of Posting, with notations showing inspections on March 11, 13 and April 3, 2009
- Exhibit C-4: Detailed floor plans for the premises
- Exhibit C-5: Compliance checks by licensing authority's inspectors of the Notice of Posting showing inspections on January 6 and January 7, 2011
- Exhibit P-1: Receipt of Pre-Filed Petitions in opposition
- Exhibit P-1b: Petition summary for opposition petitions – 543 signatures in opposition
- Exhibit P-1c: Affidavit and Petitions of Paul Jackson
- Exhibit P-1d: Affidavit and Petitions of Pat Tesauro Jackson
- Exhibit P-1e: Affidavit and Petitions of David Carter
- Exhibit P-1f: Affidavit and Petitions of Thurdis Simmons
- Exhibit P-1g: Affidavit and Petitions of Jerry Winkler
- Exhibit P-1h: Affidavit and Petitions of Scott Lamm
- Exhibit P-1i: Affidavit and Petitions of William Porter
- Exhibit P-1j: Affidavit and Petitions of Edward Sullivan
- Exhibit P-1k: Affidavit and Petitions of Kathleen Fry
- Exhibit P-1l: Affidavit and Petitions of Robert Morrison
- Exhibit P-1m: Affidavit and Petitions of Victoria Eppler
- Exhibit P-1n: Affidavit and Petitions of Kathleen Kurtz
- Exhibit P-1o: Affidavit and Petitions of Susanne Dochinson
- Exhibit P-1p: Affidavit and Petitions of Timothy Hepp
- Exhibit P-1q: Affidavit and Petitions of Judith Spiegai

- Exhibit P-2: Photo of proposed location of Applicant business
- Exhibit P-4: E-Mail from State Representative Beth McCann to Director Penny May in opposition to the granting of this license. Admitted after the foundational testimony of Michelle McGruder
- Exhibit P-5: Letter to Capital Hill United Neighbors, Inc., c/o Robert Armstrong, President
- Exhibit P-6: Letter from Congress Park Neighbors, Inc.

Documents Offered but Not Admitted

- Exhibit P-3: Two (2) page letter to Director Penny May with six (6) signatures of businesses in the designated area

Applicant and Its Business Plan

Tagert, LLC is a limited liability corporation. Mr. Dustin Swenson is the business owner and President of the LLC. He was present at hearing and testified on the company's behalf.

Mr. Swenson has eight years in the wine business, and desires to open a location that is a small, local, gallery and wine store. He has eight years in the wine business, and as a general manager of a liquor store. He loves the idea of improving patron's knowledge of wine. He currently works at a small liquor store that has received positive press for its service and wine business. He believes that he has been assisting others with their dream, and now it is his turn to follow his passion.

He desires this location because it is a walk-able neighborhood and there is no devoted store to just the wine lover. He believes that the other stores in the area are liquor focused, and are not focused on the customer, but purely on the sale. He desires to have a gallery feel where service and customer relations are foremost. He hopes to be a part of the neighborhood, and desires to purchase the property.

Mr. Swenson testified that this liquor store will be a welcome addition to the neighborhood. He has heard from residents that they would appreciate the opportunity to purchase good wine at reasonable prices, enjoy wine tastings and learn more about wine.

He testified as to the efforts he would make to alleviate neighborhood concerns such as parking, delivery times, transients or loiterers, and security and safety. He expects that patrons will only be in the store for a short period of time, even during events such as wine tastings so parking will not be a problem. He does not plan to sell small bottles of alcohol, e.g., pint sized bottles, and only certain beers, thereby catering to a different crowd than what may be the typical vagrant's desire. He stated that since it will be a relatively small store, alcohol delivery will not be extensive, and will be done through the alley only a couple of days per week.

Mr. Swenson further testified that he believes there is a need in the neighborhood for the granting of this liquor license, and he personally desires the granting of this license.

Mr. Swenson testified as to the posting of the notice of hearing, and after voir dire, it was determined that posting had been up and proper beginning 30 days before the hearing date. He additionally testified as to his gathering of signatures. He offered Petitions with 275 signatures in support of the application.

Under cross-examination Mr. Swenson acknowledged that the business location is surrounded by residences on the location side of the street, however across the street are businesses. He is not a resident or property owner of the designated area. There were questions as to his right of possession of the property, and he stated that a contract to purchase the property had expired and an extension would be filed with the Department.

Determination Regarding Petitions

Protestants objected to the introduction of several of the signatures offered by Applicant, based on signatory address, and requested additional time to review and confirm the validity of the signatures. The request was granted, and each party was given time by which their objections and responses had to be provided to the Hearing Officer.

Objections and responses were received from both parties. Based upon a review of these submissions, the Hearing Officer finds the following:

Signatures obtained prior to the actual time to begin gathering signatures as per Department rules and regulations will not be accepted as valid. This amounts to thirty (30) signatures.

Signatures obtained from persons not residing within, or owning or managing a business within the designated area will not be accepted as valid. This amounts to sixty eight (68) signatures.

The signature of Ms. Killian (first name is not legible) will not be accepted as valid for either party. Ms. Killian signed both a petition for the Applicant and a petition against the Applicant. The parties variously argue that her intentions were as the document she first signed or last signed. In either case, her signature on both calls into question her understanding of what she signed whenever she may have signed it.

A total of 175 signatures will be accepted as valid in support of the Applicant.

A total of 542 signatures will be accepted as valid in opposition to the Applicant.

Needs and Desires

The city has issued a total of one (1) Hotel and Restaurant Liquor License in the designated neighborhood and one (1) Retail Liquor Store License. (Exhibit C-3). There was significant opposition to the granting of this liquor license. 18 residents or business owners from the designated area testified En Masse in support of the Applicant. Three (3) residents testified in opposition to the granting of this license. 75 residents or business owners testified En Masse in opposition to the granting of this license. One (1) registered neighborhood association appeared in opposition to the Applicant, Congress Park Neighbors, Inc. (CPN). A total of 175 signatures were obtained in support of the

Applicant. A total of 542 signatures were obtained in opposition to the granting of this license.

Supporting Testimony

Mr. Steven Lang testified as a resident for the designated area. He has resided at 1160 Gaylord Street for over 35 years. He is a member of the registered neighborhood organizations and would patronize the Applicant if approved. He likes that it would be within walking distance in the neighborhood and there is nothing similar in the neighborhood. He has no concerns about noise or traffic should the license be approved. He acknowledged that he lives on the outside boundary of the designated area and normally travels to a liquor store outside of the designated area (Argonaut) for his alcoholic purchases. Mr. Lang further testified that he believes there is a need in the neighborhood for the granting of this liquor license, and he personally desires the granting of this license.

Mr. Sean McGechie testified as a resident of the designated area. He has resided at 1330 Elizabeth Street, #3 for three and one-half (3 ½) years. He believes it is an expanding neighborhood and would appreciate the ease of walking to purchase a bottle of wine. He believes it would be good for the neighborhood and he would like a small business that knows its customers personally. He believes it would add more life to the area and he has heard favorable comments from his neighbors. He believes there is a need in the neighborhood for the granting of this liquor license, and he personally desires the granting of this license. He currently often purchases his wine at Argonaut, but would prefer a smaller, more personal location for his purchases.

Mr. Shayne Brady testified as a resident of the designated area. He has resided at 944 St. Paul Street for eight (8) years and has lived in the general area for over 25 years. He believes that a small specialty shop is needed in the neighborhood. There is nothing similar in the area and the needs of the neighborhood are not being met. He stated that it is a walking area and the city has mechanisms to address businesses that are not being a good neighbor. He does believe the granting of this license will have any adverse impact on the health, safety, welfare or morals of the neighborhood and it would add to the enjoyment of the area.

Under cross examination he testified that he often patronizes Argonaut liquor store but that driving there is a hassle.

Registered Neighborhood Organization

Ms. Kathleen Hynes testified as the Secretary of Congress Park Neighbors, Inc. (CPN). She testified that CPN met and a vote was taken after a presentation regarding the license application. 74 members living within the designated area voted, with 52 voting in opposition and 22 voting in support of the application.

Opposition Testimony

Mr. Danny Leach testified as a resident of the designated neighborhood. He has resided at 1260 Clayton Street for 25 years. He stated that the area is a diverse and historic neighborhood with primarily residential homes and some commercial businesses. He is concerned about the amount of traffic that this license could bring to the area. There is

minimal on-street parking and additional traffic would create a safety issue for the many families and children walking in the area. He is concerned about the business becoming a destination point that will threaten the atmosphere of the neighborhood. He does not believe that there is a need in the neighborhood for this license. He testified that the needs of the residents are served by the pharmacy in the neighborhood that sells wine and liquor as well as the Argonaut store just outside of the designated area. He has no personal desire that the license be issued.

Ms. Peggy Anderson testified as a resident of the designated area. She has resided at 1111 Detroit Street for 32 years. She testified that the needs of the neighborhood are currently met and she has no desire that the license be issued. She believes that the pharmacy and the Argonaut store meet the needs of the residents. She has concerns about the safety and traffic with the many children in the area.

Mr. Michael Nord testified as a resident of the designated area. He has resided at 1315 Clayton Street for one year. He believes that the needs of the neighborhood are being met by the current business in the area or just outside the designated area. He testified that the area is mostly a residential community and parking is often difficult. The Argonaut store is close by and has no waiting or parking difficulties. He has no personal desire that the license issue. Under cross examination he acknowledged that a positive impact may be the opportunity for neighbors to come together to enjoy a wine tasting or event at the Applicant's location.

CONCLUSIONS OF LAW AND RECOMMENDATION

1. Colorado law requires that the local licensing authority post and publish the public notice of the hearing on an application for a Retail Liquor Store License "not less than ten days prior to such hearing." C.R.S. Sec. 12-47-311(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. The petition signatures gathered were more than three to one in opposition (542 against and 175 in favor), the number of opponents present at hearing was 75, while those present in favor numbered 18. At the community meeting of the registered neighborhood organization, 52 were in opposition while 22 were in support. There clearly was an overwhelming desire presented by the neighborhood, both by signatures and in person, that the license not be granted.
3. The question of need is one that is in dispute, especially because of the presence of Argonaut Liquors just outside of the designated area. Argonaut is one of the metro areas largest liquor stores, has ample parking, and is within a very short drive of the Applicant's location. Applicant has argued that because Argonaut is outside of the designated area, it is not to be considered as able to fulfill the needs of the designated area. Alternatively, Protestants argue that its close proximity to Applicant and the designated area, as well as the fact that almost all of the witnesses testified that they


frequent Argonaut for their alcohol purchases, demonstrates that the needs of the neighborhood are being met.

4. While Argonaut is certainly a large, impersonal business, Applicant has not shown that there is a specific need for the very personal type of business that Applicant would conduct, nor that the needs of the area are not being met by the currently licensed establishments within, and in immediate proximity to, Applicant's location. This hearing officer finds that the close proximity of Argonaut Liquor Store, even though outside the designated area, and the pharmacy within the designated area, are meeting the needs of the neighborhood.

5. The applicant has failed to meet its burden of showing that (a) there is a need for the applied-for Retail Liquor Store License at the establishment known as TAGERT, LLC, d/b/a TAGERT FINE WINES at the premises known as 2625 E. 12th Ave., Denver, Colorado, and (b) the residents of the designated neighborhood desire that the requested license be issued.


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

Recommended this 25th day of January, 2011


Dante J. James
Hearing Officer

After reviewing the evidence as summarized above, the foregoing RECOMMENDED DECISION for the DENIAL of the application by TAGERT, LLC, d/b/a TAGERT FINE WINES for a Retail Liquor Store Liquor License at the premises known as 2625 E. 12th Ave., Denver, Colorado, is hereby accepted by the Director, Department of Excise and Licenses. Parties in interest have ten (10) days to submit written objections.

ISSUED this 26th day of January, 2011


Penny L. May, Director
Department of Excise and License

CERTIFICATE OF MAILING

The undergoing hereby certifies that on the 26 day of January, 2011, one true copy of the foregoing Recommended Decision was deposited in the mail of the U.S. Postal Service, postage prepaid, addressed to the following:

Alexander Hoffman, Esq.
For Applicant
727 Pearl Street, #508
Denver, CO 80203

Joel Judd, Esq.
For Protestants
2222 S. Albion Street, #100
Denver, CO 80222

Michelle Magruder, Esq.
For Protestants
50 South Steele Street, Suite 755
Denver, CO 80209

CERTIFICATE OF INTER-OFFICE MAILING

The undergoing hereby certifies that on the 26 day of January, 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, 12th Floor
201 West Colfax Avenue
Denver CO 80202

CERTIFICATE OF ELECTRONIC MAILING

The undergoing hereby certifies that on the 26 day of January, 2011, one true copy of the foregoing Recommended Decision was sent by electronic mail to the following:

Kathleen Hynes
Congress Park Neighbors, Inc.
cpnboard@congressparkneighbors.org



License Technician