



Memo

Legal Department

TO: Mayor Campbell and Members of the City Council

FROM: Judy K. Parks, Assistant City Attorney *[Signature]*

DATE: September 19, 2008

SUBJECT: Whiskey River Liquor License renewal (Agenda Item #13)

Included on this agenda for your consideration is a pending application for the renewal of the liquor license of Whiskey River. This memorandum is meant to provide you with more background on the renewal process generally, and with information on your options with regard to this business specifically.

Generally, when an application is made to obtain or renew a liquor license, the Licensee is required by the Iowa Code to meet certain qualifications with respect to both the person holding the license and also with respect to the premises covered by the License. The City, as the Licensing authority, has to endorse on that application whether or not the licensee meets all statutory requirements of both types. Since some of the qualifications are based on specialized areas of knowledge, the input of city departments having that expertise is solicited in order to determine if these qualifications have been met. If City Staff determines the premise qualifications have been met, its endorsement will be noted on the application form provided to you in your packets. Failure to meet any premises requirements would also be noted on the application form provided you and that failure is grounds for the Council to deny the license.

The requirements that a premises must meet to qualify for licensure are set by Iowa law. Among those are that the premises must conform to all applicable local ordinances; it must conform to health and fire regulations; and it must be in good repair. The Fire Department Inspection Division has specialized knowledge in the areas of local code conformance, especially with respect to building and fire code issues, and is the department relied upon to provide its opinion on these issues for premises seeking licensing.

In the case of Whiskey River, Inspections staff has withheld its endorsement of this premises based on failure of the premises to conform to all local ordinances, health and fire regulations, and to be in good repair. Provided with this memo is a notice dated August 6, 2008, by the City's Building Official which went to both the property owner and to the operator of Whiskey River advising that the structure has been declared a Dangerous Building and explaining the basis for that declaration. Conditions described in the notice are the basis for staff's withholding of the premises endorsement on the liquor license renewal. That Dangerous Building Declaration has been appealed by the building owner to the Building Code Board of Appeals, as is provided by ordinance. When that Board hears this matter, they then will issue a decision upholding or overturning the determination that this is a Dangerous Building. The date for that Board to hear this case has not been set, but would be expected to occur within the next 60 days.

This situation leaves you with several options with respect to the renewal before you, as follows:

1. Council may approve the renewal.

If the Council would choose this option, the City would provide the premises endorsement at this time and the renewed license would be issued. In the event the Building Code Board upholds the Dangerous Building determination, the City staff could seek suspension of the liquor license on the basis that the city ordinances are not being met. The City Council would have to hear that case and take action.

2. Council may deny the renewal.

If the Council chose this option, the license applicant could appeal the denial of its renewal to the State Alcoholic Beverages Division. This case would be heard before an Administrative Law Judge. Pending appeal, the Licensee would still be allowed to operate under the present license. Based on past experience, this process would probably take 3-6 months, during which time the Building Code Board would have time to hold its hearing. Whatever decision that Board made could then be used as evidence in the appeal before Alcoholic Beverages.

3. Council may delay action.

If the Council chose, they could delay action on this renewal until a later time. Since the determination that this structure is a Dangerous Building is being disputed, the Council might want to have the Building Code Board of Appeal's final determination before them to help them decide if the premises requirements are met. In the meantime, the Licensee would be allowed to operate under the present license, because they have timely filed for renewal.

Since this is the first time this sort of issue has arisen in a liquor license renewal, please feel free to contact me with questions.

Fire Department / Inspections Division

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August 8, 2008

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Russ Schoenauer
Schoenauer Property
Management, Inc.
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Clive, IA 50325

Dirk Rozboom
134 Main Street
Ames, IA 50010

Notice to Abate and Vacate a Dangerous Building

Re: Property known as 132-134 Main Street Ames, Iowa, occupied by Whiskey River/Dirk Rozboom
To Ms. Schoenauer, Mr. Schoenauer, Mr. Rozboom:

In response to my letter of July 3, Russ Schoenauer called Bruce Kinkade on July 24. Bruce summarized the conversation to me in an e-mail:

"Just had a quick visit with Russ S regarding the lack of progress on his project. He says that he is struggling with Tometich to get the engineering and drawings done, but has also contacted Kintz as a back-up if Tometich falls through. Ken Kaiser has 2 weeks of work left on a project in Fort Dodge and will then be ready to start the Whiskey River Project if Russ can get the engineering wrapped up. I reiterated that he needs to provide us a time line and stay on it. He maintains that it should be restarted within 2 to 3 weeks."

Nearly 5 weeks have elapsed since the July 3 letter was received by Russ. Based upon Russ's call to Bruce, work will be restarted sometime between August 7 and 14.

Bruce Kinkade spoke to Jim Tometich yesterday, August 7, and informed me by e-mail:

"I spoke with Jim a few minutes ago and inquired about any progress on the Whiskey River Project. He said that he called Russ after I called him (Jim) two weeks ago. He said that he got the same story that I had received about bringing in some investors and doing more of a historic renovation of the structure. He has heard nothing since."

Today is August 8. A site visit this morning revealed no activity.

A summary of this case to date:

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| September 19, 2007 | 1 st letter to you from this office identifying structural and other concerns noted during our September 17 inspection. Inspection made in response to a complaint received by this office about uneven floors and general building condition. |
| October 15, 2007 | You retained Bill Bossenberger of Bossenberger Associates Structural Engineers. He provided a report to you which was copied to this office. |
| October 25, 2007 | 2 nd letter to you from this office requesting additional structural engineer's evaluation |
| November 7, 2007 | You retained Jim Tometich of Tometich Engineering. He provided a report to you and copied this office. |
| December 7, 2007 | The City received a report prepared on our behalf by Jim Goes of JF Kintz Engineering. |

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| December 10, 2007 | I e-mailed you a copy of the Kintz report. |
| March 14, 2008 | I sent you a letter in response to Ken Kaiser's building permit application, and set out the City's expectations, based upon the Kintz report. A building permit was issued to Kaiser for exploratory work. That exploratory work was begun, and remains incomplete. |
| July 3, 2008 | I sent a follow up letter, as noted on page 1 of this letter |
| July 24, 2008 | Call from you to Bruce, as noted on page 1 of this letter |
| August 7, 2008 | No progress reported by your engineer, Tometich |
| August 8, 2008 | No activity visible at the site |

Nearly 1 year has elapsed since our original notice was issued to you on September 19, 2007. You've received reports from three different structural engineers, Bossenberger, Tometich, and Kintz, who each agree there are serious structural problems at this building.

During this past year nothing has been accomplished to correct the identified structural problems except setting scaffold on the front sidewalk and removing a few courses of brick to enable examination of the steel beam carrying the second floor brick masonry façade load on the east half of the building. The condition of this section of brick façade is now more hazardous than it was prior to the beginning of this exploratory work begun in April.

The actions you have implemented to date do not meet the needs of the situation, nor the timelines we established in prior correspondence.

Therefore, you are hereby notified:

This structure is declared to be a Dangerous Building, as defined in Ames Municipal Code Section 5.400, Abatement of Dangerous Buildings. Specifically, the conditions or defects that exist are as defined in subsections:

(c); (e); (f); (g); (h); (k); (m); (n); (p); and (q);

In accord with Section 5.400(2), you are hereby notified:

The structure must be vacated of human occupancy within 30 days of the date of this notice, i.e., by not later than Wednesday, September 10, 2008.

In accord with Section 5.400(2)(e) Appeals, you are hereby notified that you have the right to appeal this action, based upon the grounds that you believe this office has erred in the determination that this building is dangerous, and that the building does not, in fact, meet the criteria set out in the subsections referenced above. In the event you wish to appeal, this office must receive a letter requesting a hearing, from you, within 20 days of the date of this notice, i.e., by not later than Friday, August 29, 4:30 p.m.

Respectfully,

David A. Brown
Building Official

Cc: Clint Petersen, Fire Chief
Doug Marek, City Attorney
Judy Parks, Assistant City Attorney
Bruce Kinkade, Building Inspection Supervisor
Kevin Anderson, Sanitarian