

CARSON CITY LIQUOR AND ENTERTAINMENT BOARD

Minutes of the March 19, 2009 Meeting

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A meeting of the Carson City Liquor and Entertainment Board was held during the regularly scheduled Board of Supervisors meeting on Thursday, March 19, 2009 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

PRESENT: Chairperson Robert Crowell
Member Shelly Aldean
Member Ken Furlong
Member Pete Livermore
Member Molly Walt
Member Robin Williamson

STAFF: Larry Werner, City Manager
Alan Glover, Clerk - Recorder
Neil Rombardo, District Attorney
Kathleen King, Recording Secretary

NOTE: A recording of these proceedings, the board's agenda materials, and any written comments or documentation provided to the Clerk during the meeting are public record. These materials are on file in the Clerk-Recorder's Office, and available for review during regular business hours.

10. CALL TO ORDER AND ROLL CALL (8:37:52) - Chairperson Crowell called the meeting to order at 8:37 a.m. Roll was called; a quorum was present.

11. ACTION ON APPROVAL OF MINUTES - February 19, 2009 (8:38:09) - Member Aldean moved to approve the minutes, as presented. Member Williamson seconded the motion. Motion carried 5-0.

12. PUBLIC WORKS BUSINESS LICENSE

12(A) ACTION TO APPROVE JEANNETTE LYNN KELLEY AS THE LIQUOR MANAGER FOR THE LIQUOR LICENSE FOR THE CARSON HORSESHOE CLUB, LOCATED AT 402 NORTH CARSON STREET, CARSON CITY, INCLUDING THE NON-REFUNDABLE INVESTIGATION FEE OF \$75.00 (8:38:32) - Chairperson Crowell introduced this item. Principal Planner Jennifer Pruitt introduced Senior Permit Technician Lena Tripp, read the title of the agenda item into the record, and reviewed the agenda materials. Chairperson Crowell recognized Jeannette Lynn Kelley, who had stepped to the podium. He entertained questions or comments and, when none were forthcoming, a motion. **Member Williamson moved to approve Jeannette Lynn Kelley as the liquor manager for the liquor license at the Carson Horseshoe Club, located at 402 North Carson Street, Carson City, including the non-refundable investigation fee of \$75.00** Member Aldean seconded the motion. Chairperson Crowell entertained public comment and, when none was forthcoming, a vote on the pending motion. **Motion carried 6-0.** Member Livermore encouraged Ms. Kelley and the Horseshoe Club staff to give due consideration to the next two agenda items.

12(B) DISCIPLINARY ACTION AGAINST LIQUOR LICENSE #09-7007, HELD BY GOMEZ FAMILY TRUST DBA WOODY'S, LOCATED AT 4385 SOUTH CARSON STREET, CARSON CITY, NEVADA, PURSUANT TO CCMC 4.13.150; THIS DISCIPLINARY ACTION IS BASED ON THE ISSUANCE OF A CITATION FOR A SECOND OFFENSE CRIMINAL

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STATUTE VIOLATION WITHIN SIX MONTHS OF THE FIRST CITATION ISSUANCE, RELATED TO THE SALE OF LIQUOR AT THE LICENSED PREMISES; THIS ACTION MAY INCLUDE THE IMPOSITION OF A FINE OF UP TO \$500.00 ON THE LICENSEE AND THE REQUIREMENT THAT THE LICENSEE AND ALL EMPLOYEES SELLING, DISPENSING, OR SERVING LIQUOR ATTEND THE SHERIFF'S OFFICE ALCOHOL SERVERS TRAINING PROGRAM WITHIN THREE MONTHS OF THIS HEARING; IF THE LICENSEE AND RELEVANT EMPLOYEES ARE REQUIRED TO ATTEND THE ALCOHOL SERVERS TRAINING PROGRAM, THE LICENSEE WILL BE REQUIRED TO SUBMIT A LIST OF ALL EMPLOYEES SELLING, DISPENSING, OR SERVING LIQUOR TO THE PUBLIC WORKS DEPARTMENT BUSINESS LICENSE DIVISION NO LATER THAN SEVEN (7) DAYS FROM THIS HEARING; IF THE LICENSEE FAILS TO SUBMIT THE LIST OF EMPLOYEES WITHIN SEVEN (7) DAYS, THIS MATTER WILL BE RESCHEDULED FOR THE NEXT CARSON CITY LIQUOR BOARD MEETING TO SHOW CAUSE AS TO WHY FURTHER DISCIPLINARY ACTION SHOULD NOT BE IMPOSED (8:41:11) - Ms. Pruitt introduced this item, and reviewed the agenda materials.

(8:43:10) Frank and Patricia Gomez introduced themselves for the record. Mrs. Gomez reviewed the circumstances giving rise to issuance of the first citation. Mr. Gomez expressed the opinion that the circumstances giving rise to issuance of the second citation amounted to an honest mistake. Member Aldean described the IDVisor device, purchased by the owner of the Country Store, and suggested the Gomezes consider purchasing one for their establishment. Discussion followed. Mr. Gomez acknowledged an actual sale of alcohol to a minor was transacted. He explained that the clerk had verified the correct year but failed to notice the month. Mrs. Gomez advised that two clerks have now been assigned to check identification during the night shift. Chairperson Crowell entertained additional questions or comments of the board members, and additional comments from the Gomezes.

Member Aldean expressed sympathy for the Gomezes' position in "trying to make an honest living," and a willingness to reduce the fine to \$250.00. Mr. Gomez acknowledged having attended the Sheriff's Office servers training program. He displayed the certificate provided as a result of the subject employee's successful completion of a servers training program offered via the Internet. Chairperson Crowell entertained a motion. **Member Aldean moved to impose disciplinary action against liquor license 09-7007, held by Gomez Family Trust dba Woody's, located at 4385 South Carson Street, Carson City, Nevada, pursuant to CCMC 4.13.150; this disciplinary action is based on the issuance of a citation for a second offense criminal statute violation, within six months of the first citation issuance, related to the sale of liquor at the licensed premises; this action is to impose a fine of \$250.00 on the licensee and to require that the licensee and all employees selling, dispensing, or serving liquor attend the Sheriff's Office alcohol servers training program within three months of this hearing; a list of all employees selling, dispensing, or serving liquor must be submitted to the Public Works Department Business License Division no later than seven days from this hearing; if the licensee fails to submit the list of employees within seven days, this matter will be rescheduled for the next Carson City Liquor Board meeting to show cause as to why further disciplinary action should not be imposed.** Member Williamson seconded the motion.

Chairperson Crowell opened this item to public comment. (8:54:00) Mrs. Gomez advised that the employee in question had pleaded not guilty in consideration of the criminal charges.

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Chairperson Crowell advised of the intent to vote in support of the motion, but expressed the opinion that the \$500.00 fine should be imposed. He discussed the distinction between the criminal code citation pertinent to the store clerk and the restrictions applicable to the liquor license holder. He emphasized the role of the Liquor and Entertainment Board is not to adjudicate the clerk's guilt or innocence, but to determine whether the liquor license holder has complied with the terms of said license. Member Williamson discussed the distinction between a citation and a conviction, as provided in the pertinent ordinance. She suggested considering the intent of sting operations and the corresponding hearings before this board, but noted the possibility of a disgruntled employee attempting to sabotage a license holder.

Mr. Gomez noted the problem of high employee turnover rate at his establishment. Mrs. Gomez advised that they would consider purchasing the IDVisor device. In response to Member Williamson's comments, Chairperson Crowell suggested the purpose of these hearings is to determine that a liquor license holder is not deliberately selling to minors. In response to a comment, Member Williamson clarified her intent to consider the board's discretion in light of the uniqueness of each case. Mr. Rombardo acknowledged that, through the administrative process, this board could reconsider an action in light of the possibility of an improperly issued citation. He noted two different standards; the criminal standard which is beyond a reasonable doubt and the other which is preponderance of the evidence. He expressed concern that no evidence had been presented to justify reducing the fine. He acknowledged the board has full discretion to reduce the fine, but reiterated there had been no evidence presented to justify reducing the fine from \$500.00. Chairperson Crowell requested the Gomezes' input on the pending motion in consideration of additional evidence. Mr. Gomez requested the board to consider the pending motion.

Member Livermore noted Mrs. Gomez's assertion of "human error," and that this was the first time to hear such an admission. Member Walt expressed concern over the community's children in consideration of the liquor license holders' responsibility to prevent the sale of alcohol to minors. Member Furlong advised that, for this type of store, the "program has an 87-percent pass rate. Of the failures, this store represents 50 percent ..." Chairperson Crowell expressed guarded sympathy for occasional lapse in judgement and human error, but noted the issuance of a second citation in the subject matter and that "the person used in these stings doesn't look 21." In consideration of the possible \$500 fine and that a third offense can carry imposition of a \$1,500 fine, Member Aldean strongly recommended the Gomezes purchase an IDVisor device. Mr. Gomez reiterated issues associated with employee turnover and lack of experience.

Chairperson Crowell thanked the Gomezes, and called for a vote on the pending motion. **Motion failed 3-3.** Chairperson Crowell entertained another motion. **Member Williamson moved to impose disciplinary action against liquor license 09-7007, held by Gomez Family Trust, doing business as Woody's, located at 4385 South Carson Street, Carson City, Nevada, pursuant to Carson City Municipal Code 4.13.150; as stated in the staff report, with imposition of a \$500.00 fine. Member Walt seconded the motion.** Chairperson Crowell entertained discussion and, when none was forthcoming, called for a vote on the pending motion. **Motion carried 5-1.**

12(C) ACTION ON AN APPEAL HEARING FOR LIQUOR LICENSE #09-23465 HELD BY ALANDDON, LLC, DBA ARCO AM/PM #82392, LOCATED AT 720 SOUTH CARSON STREET, CARSON CITY, NEVADA; THIS APPEAL HEARING IS BASED ON THE ISSUANCE OF A CITATION FOR A FIRST OFFENSE CRIMINAL STATUTE VIOLATION RELATED TO THE SALE OF LIQUOR TO A MINOR AT THE LICENSED PREMISES; THIS HEARING IS FOR THE LICENSEE TO SHOW CAUSE AS TO WHY THE \$100.00 ADMINISTRATIVE CITATION,

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PURSUANT TO CCMC 4.13.150(8)(a), SHOULD NOT BE IMPOSED AND MADE PAYABLE BY THE LICENSEE; and 12(D) DISCIPLINARY ACTION AGAINST LIQUOR LICENSE #09-23465, HELD BY ALANDDON, LLC, DBA ARCO AM / PM #82392, LOCATED AT 720 SOUTH CARSON STREET, CARSON CITY, NEVADA, PURSUANT TO CCMC 4.13.150; THIS DISCIPLINARY ACTION IS BASED ON THE ISSUANCE OF A CITATION FOR A SECOND OFFENSE CRIMINAL STATUTE VIOLATION, WITHIN SIX MONTHS OF THE FIRST CITATION ISSUANCE, RELATED TO THE SALE OF LIQUOR AT THE LICENSED PREMISES; THIS ACTION MAY INCLUDE THE IMPOSITION OF A FINE OF UP TO \$500.00 ON THE LICENSEE AND THE REQUIREMENT THAT THE LICENSEE AND ALL EMPLOYEES SELLING, DISPENSING, OR SERVING LIQUOR ATTEND THE SHERIFF'S OFFICE ALCOHOL SERVERS TRAINING PROGRAM WITHIN THREE MONTHS OF THIS HEARING; IF THE LICENSEE AND RELEVANT EMPLOYEES ARE REQUIRED TO ATTEND THE ALCOHOL SERVERS TRAINING PROGRAM, THE LICENSEE WILL BE REQUIRED TO SUBMIT A LIST OF ALL EMPLOYEES SELLING, DISPENSING, OR SERVING LIQUOR TO THE PUBLIC WORKS DEPARTMENT BUSINESS LICENSE DIVISION NO LATER THAN SEVEN (7) DAYS FROM THIS HEARING; IF THE LICENSEE FAILS TO SUBMIT THE LIST OF EMPLOYEES WITHIN SEVEN (7) DAYS, THIS MATTER WILL BE RESCHEDULED FOR THE NEXT CARSON CITY LIQUOR BOARD MEETING TO SHOW CAUSE AS TO WHY FURTHER DISCIPLINARY ACTION SHOULD NOT BE IMPOSED (9:10:26) - Chairperson Crowell combined items 12(C) and 12(D). Ms. Pruitt read the agenda item titles into the record, and reviewed the pertinent agenda materials. In response to a question relative to item 12(C), she explained that the liquor license holder is appealing the \$100 fine. Member Aldean noted that the person against whom the citation was issued pled guilty in the criminal proceeding. Mr. Rombardo advised that the Carson City Municipal Code provides for the subject appeal. The criminal proceeding has no bearing on this hearing except that it can be used as evidence. "One does not preclude the other." Mr. Rombardo acknowledged item 12(C) was pertinent to appeal of the \$100 fine, and item 12(D) was pertinent to a second offense which would be reduced to a first offense in light of a successful appeal.

(9:16:21) Al Fiegehen introduced himself for the record, and reviewed the circumstances giving rise to the first offense citation. He advised that the employee originally pleaded not guilty in the criminal proceeding, and then changed his plea to guilty "but the judge put the case off ..." "They delayed the case for one year and if this employee did not have any troubles for one year ..., then the judge would pronounce him to be innocent ..." Mr. Fiegehen acknowledged that sale of alcohol to a minor had been transacted. In response to a question, he advised that all his employees completed the Sheriff's servers education course following issuance of the first citation. In addition, new signage was installed "throughout the store," and the owners instructed the employees to request identification from any person appearing to be under 50 years of age. He reviewed the circumstances giving rise to the second offense citation. He advised of having purchased the IDVisor device and that it is in the process of being installed.

Mr. Rombardo provided clarification with regard to the deferred sentence imposed on the clerk involved in the first offense. He emphasized that a deferred sentence does not imply an absence of guilt. Member Walt reviewed the sting operation process. In response to a question, Detective Daniel Gonzales circulated a copy of the "male decoy's" license among the board members. Officer Sal Acosta described the license configuration as "vertical, which indicates that he's under 21." Officer Acosta acknowledged that driver's licenses are reviewed as part of the Sheriff's servers education training. He reviewed the direction provided the compliance check decoys with regard to showing identification and disclosing their true ages upon

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request. Detective Gonzales acknowledged that the compliance check decoys are usually not requested to appear at these hearings.

Mayor Crowell summarized the purpose of the agenda items, and offered Mr. Fiegehen another opportunity to testify. (9:25:14) Mr. Fiegehen advised that the clerk who had committed the second offense had been terminated, pursuant to store policy. He discussed the possibility of imposing criminal consequences against minors for attempting to purchase alcohol or tobacco products.

In response to a question, Mr. Rombardo advised that the subject hearing is based on preponderance of the evidence. He further advised establishing some type of factual basis in the record. Member Aldean inquired as to whether a store clerk would have purview to confiscate the license of a minor attempting to violate the law by purchasing alcohol. Mr. Fiegehen expressed concern over placing his clerks in jeopardy. Mr. Rombardo acknowledged an earlier statement that a minor attempting to purchase alcohol or tobacco products is not illegal. He advised of consideration being given to amending the Carson City Municipal Code, but noted the uniqueness of Nevada's vertically configured driver's license issued to minors. Member Furlong discussed a section in the servers education training course which cautions against becoming confrontational with a minor attempting to purchase alcohol. In response to a question, he discussed the information provided by the IDVisor device.

Chairperson Crowell suggested that every clerk inquire of every patron as to whether they are old enough to purchase alcohol or tobacco products. He recommended considering the possibility of revising the subject process from an evidentiary hearing to an appeal hearing.

Ms. Pruitt noted, for the record, that the first offense is administrative in nature. Since the process started, there have been 24 first offenses, with the subject item being the first appeal. Typically, the \$100 fine is imposed and subsequently paid. (9:34:33) Mr. Fiegehen explained that the deferred sentence was the reason for choosing to appeal the \$100 fine. He reiterated that notices are posted "all over the store." His store clerks are required to ask three questions: (1) "How old are you?"; (2) "What is your date of birth?"; and (3) "May I see your driver's license?" Termination is the penalty for failing to ask the three questions at the register, and Mr. Fiegehen described the audio monitoring system which verifies employee compliance. He advised that a "brand new surveillance system" had been installed by which the employees' compliance is also monitored. He acknowledged having purchased the IDVisor device, and discussed its operation. He advised that the IDVisor device will be linked to the cash register which will prevent a transaction if an identification is not scanned.

Chairperson Crowell entertained public comment on item 12(C) and, when none was forthcoming, further discussion or a motion of the board. **Member Williamson moved to deny the appeal of the administrative citation imposed on liquor license 09-23465, held by Alanddon, LLC, doing business as Arco AM / PM #82392, located at 720 South Carson Street, Carson City, Nevada, based on the issuance of a citation for a first offense criminal statute violation related to the sale of liquor to a minor at the licensed premises, and impose the \$100.00 administrative citation pursuant to Carson City Municipal Code 4.13.150(8)(a), to be payable by the licensee. Member Walt seconded the motion.** Member Livermore expressed concern over the equal treatment of liquor license holders and their employees. Member Aldean expressed sympathy toward the plight of the business owner, but noted that Mr. Fiegehen's employee had pled guilty in the criminal proceeding. A brief discussion followed, and Chairperson Crowell called for a vote on the pending motion. **Motion carried 6-0.**

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Chairperson Crowell entertained a motion for item 12(D). In response to a question, Mr. Fiegehen advised he had no further comment. **Member Aldean moved to impose disciplinary action against liquor license #09-23465, held by Alanddon, LLC, doing business as Arco AM / PM #82392, located at 720 South Carson Street, Carson City, pursuant to CCMC 4.13.150;** this disciplinary action is based on the issuance of a citation for a second offense criminal statute violation within six months of the first citation issuance related to the sale of liquor at the licensed premises; this action is to impose a fine of \$500 on the licensee, and to require that the licensee and all employees selling, dispensing, or serving liquor attend the Sheriff's alcohol servers training program within three months of this hearing; a list of all employees selling, dispensing, or serving liquor must be submitted to the Public Works Department Business License Division no later than seven days from this hearing; if the licensee fails to submit the list of employees within seven days, this matter will be rescheduled for the next Carson City Liquor Board meeting to show cause as to why further disciplinary action should not be imposed. Member Aldean commended Mr. Fiegehen on all the preemptive devices being installed at his store, to "recapture control of [his] establishment." Mr. Fiegehen reiterated the request to consider amending the Carson City Municipal Code to prevent minors from attempting to purchase alcohol products. In response to a question, Member Aldean advised that Mr. Fiegehen would need to provide evidence that his employees have completed the alcohol servers training course. Deputy Gonzales confirmed that completion certificates would need to be provided to the Business License Division. All employees who have not previously completed the course would be required to attend and complete the course. Chairperson Crowell called for a second on the motion. **Member Williamson seconded the motion.** Chairperson Crowell called for additional comments and, when none were forthcoming, a vote on the pending motion. **Motion carried 6-0.**

Deputy Gonzales acknowledged that employees who have completed the servers education training have been subsequently cited for selling alcohol products to minors. Member Williamson suggested ongoing review of the compliance check program effectiveness. Member Furlong advised that extensive statistical information is maintained.

12(E) DISCIPLINARY ACTION AGAINST LIQUOR LICENSE #09-3963, HELD BY CARSON CITY NUGGET, INC. DBA CARSON NUGGET, LOCATED AT 507 NORTH CARSON STREET, CARSON CITY, NEVADA, PURSUANT TO CCMC 4.13.150; THIS DISCIPLINARY ACTION IS BASED ON THE ISSUANCE OF A CITATION FOR A THIRD OFFENSE CRIMINAL STATUTE VIOLATION WITHIN SIX MONTHS OF THE FIRST CITATION ISSUANCE, RELATIVE TO THE SALE OF LIQUOR AT THE LICENSED PREMISES; THIS ACTION MAY INCLUDE THE IMPOSITION OF A FINE UP TO \$1,500.00 ON THE LICENSEE AND THE SUSPENSION OR REVOCATION OF THE LIQUOR LICENSE (9:49:23) - Ms. Pruitt introduced this item, and reviewed the agenda materials. Chairperson Crowell expressed the understanding that sale of alcohol to a minor was actually transacted. In response to a question, Ms. Tripp explained that liquor licenses are issued "per location and the fees are set up to the main liquor license and then any additional wet bars that they have underneath it." She acknowledged that the employee who transacted the sale of alcohol to the minor was terminated.

Chairperson Crowell suggested a significant difference between a convenience store and a major gaming establishment with numerous bars. He advised of gaming establishments in Reno which have separately licensed bar areas. He suggested that fining the subject liquor license holder and suspending said license would be over-penalizing the establishment because of the effect of shutting down all the bars. He further

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suggested imposing a \$1,500 fine and a seven-day suspension of a “bar or bars that would be worked out between the licensee and the Sheriff’s Office ...” In addition, as a voluntary measure on the part of the licensee, the board would request a charitable contribution to an organization which deals with underage drinking.

Chairperson Crowell noted that copies of the Carson Nugget Employee Alcohol Awareness program materials had been distributed to the board members and the Clerk prior to the start of the meeting. (9:54:12) Carson Nugget General Manager Star Anderson read prepared remarks into the record, copies of which had also been provided to the board members and the Clerk. In response to a question, Ms. Anderson advised that using poker chips to purchase alcohol is illegal in Nevada. (10:08:54) Carson Nugget Owner Alan Adams concurred with Chairperson Crowell’s earlier suggestions. He advised of 99 Nugget employees who are trained and authorized to serve alcohol, and expressed concern over the possibility of sabotage by a disgruntled employee. He assured the board that the Carson Nugget is doing its “level best,” and expressed a willingness to continue striving to improve. Chairperson Crowell assured Mr. Adams that attempted sabotage by a disgruntled employee should exonerate the liquor license holder. He acknowledged the measures taken by Carson Nugget management to prevent the sale of alcohol to minors, and expressed understanding for the magnitude associated with service of alcohol in such a large gaming establishment. He reiterated the recommendation to impose a \$1,500 fine, to suspend the liquor license for a period of seven days on a bar or bars, to be arranged between Carson Nugget management and the Sheriff, so that only one bar is closed at a time. He noted Ms. Anderson’s reference to the Carson Nugget’s ongoing contributions to at-risk youth in the community, and requested a continued commitment.

In response to a question, Ms. Anderson advised that employee hours would be reduced as a result of closing a bar or bars for a period of seven days. Chairperson Crowell passed the gavel to Chairperson *Pro Tem* Aldean and **moved to impose a \$1,500 fine for a third-offense violation; to impose an order of suspension applicable to the liquor license, enforcement of which would be arranged between Carson Nugget management and the Sheriff’s Office, limited to one bar or bars on a rotating basis to minimize the disruption to the other Carson Nugget employees.** Chairperson Crowell requested the Nugget to continue working with at-risk youth and to voluntarily report back to the Board, at some future meeting, the Nugget’s efforts to reduce underage drinking in the community. **Member Livermore seconded the motion.** Chairperson *Pro Tem* Aldean called for public comment.

(10:13:19) Steve McClung commended a recently suspended liquor license at a 7-11 store, and advised of signs posted at said store informing of the requirement to produce identification to purchase tobacco or alcohol products. He suggested that suspension of a liquor license at a large corporation or a “mom and pop operation” has the same “financial impact. It’s all relative.” He expressed support for board consistency on such matters, and concern over being “selective.” Member Walt agreed with the importance of consistency. She noted that gaming and alcohol “go hand-in-hand.” In consideration of the 7-11 store, she suggested the most detrimental financial impact would have been “to take away their gas.” Mr. McClung suggested that other sales were “taken away by taking away alcohol sales. They lost sales in other commodities such as gasoline, cigarettes, other items that people would normally shop for while they’re picking up their six pack of beer.” Member Walt expressed the opinion that the board’s action will have the same effect on the Carson Nugget. Mr. McClung reiterated the importance of equality, and advised that the 7-11 store had to reimburse their franchise corporation for the sales they would have had if the license had not been suspended. Chairperson *Pro Tem* Aldean thanked Mr. McClung for his attendance and participation.

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Chairperson *Pro Tem* Aldean called for additional public comment and, when none was forthcoming, a vote on the pending motion. **Motion carried 6-0.** Chairperson *Pro Tem* Aldean returned the gavel to Chairperson Crowell.

13. ACTION TO ADJOURN THE LIQUOR AND ENTERTAINMENT BOARD (10:17:39) - Chairperson Crowell adjourned meeting at 10:17 a.m.

The Minutes of the March 19, 2009 Carson City Liquor and Entertainment Board are so approved this 16th day of April, 2009.

ROBERT L. CROWELL, Chair

ATTEST:

ALAN GLOVER, Clerk - Recorder