

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	March 6, 2017
	Agenda Item No.	58
	Roll Call No.	<u>17-0416</u>
	Communication No.	<u>17-281</u>
	Submitted by:	Scott E. Sanders, City Manager

AGENDA HEADING:

Appeal of the Street Use Team’s decision to issue a street use permit to Mickey’s Irish Pub/DH50Walnut, LLC. for Court Avenue between 3rd and 4th Streets on St. Patrick’s Day March 17, 2017.

SYNOPSIS:

Recommend a final determination on the appeal from Annie Baldwin/AGB, LLC on the street use team’s decision to issue a street use permit to Mickey’s Irish Pub/DH50Walnut, LLC. for Court Avenue between 3rd and 4th Streets on St. Patrick’s Day.

FISCAL IMPACT:

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

The following four (4) street use applications were submitted to the City Manager’s Office for a St. Patrick’s Day block party to be held on Court Avenue between 3rd and 4th Streets on March 17, 2017:

1. An application from Mickey’s Irish Pub/DH50 Walnut, LLC (Steve McFadden) on May 17, 2016
2. An application from AGB, LLC (Annie Baldwin) on May 17, 2016
3. An application from TBJ, LLC (Tom Baldwin) on February 3, 2017
4. An application from LWBJ (Paul Juffer) – court appointed receiver for Boom Goes the Dynamite, LLC/Mickey’s on February 13, 2017

At the advice of the Legal Dept., all four (4) applications were processed and fees were paid.

The street use team consisting of representatives from Building Safety, City Clerk’s Office, City Manager’s Office, Fire Department, Parks and Recreation Department, Police Department, Public Works Department, and Traffic and Transportation met with all four (4) applicants on Wednesday, February 22, 2017 at their regularly scheduled street use meeting to discuss each individual application. Legal staff was present to provide legal advice for the street use team.

Two (2) of the applicants, Steve McFadden and Annie Baldwin, brought their own attorneys to the meeting who participated by answering questions about their client's application.

After the presentations on each application, audience members were given the opportunity to speak. Two (2) attendees who own businesses in the Court Avenue District spoke in support of the event in general and additionally in support of Annie Baldwin and her application, AGB, LLC.

The applicants and other attendees then departed and the street use team resumed as staff to discuss all four (4) applications. It was the unanimous decision of the team to approve the application, with conditions, from LWBJ, the court appointed receiver for Boom Goes the Dynamite for the following reasons:

- Boom Goes the Dynamite was determined to be the best representative of the recurring event (the ordinance allows consideration to be given to a recurring event) because it was the original corporation to submit an application in 2012, and
- Boom Goes the Dynamite is still being operated by its court appointed receiver and not fully dissolved, so it is believed that both prior owners (Annie Baldwin and Steve McFadden) would benefit if the street use permit was granted to the receiver, which further advances the "recurring event" aspect of the Code.

Two (2) conditions were placed on LWBJ before the street use permit could be granted:

- The petition with the required signatures of more than 60% of the business owners abutting Court Avenue between 3rd and 4th Streets be submitted to the City Manager's Office by Wednesday, March 1, 2017; and
- Secure an acceptable liquor license for the event.

The street use team also decided that if the receiver cannot perform the conditions, Steve McFadden's application would be preferred over Annie Baldwin's application because Mr. McFadden applied before Ms. Baldwin. However, Mr. McFadden would then need to comply with the 60% signature requirement on the petition.

Assistant to the City Manager Kandi Reindl-Sullivan, who chairs the street use team meetings, contacted all four (4) applicants on the afternoon of February 22nd to let them know of the street use team's decision. One (1) applicant (AGB, LLC -Annie Baldwin) asked if she could appeal the street use team's decision and was informed that she has the right to appeal that decision to the City Council at the next City Council meeting. The City Clerk's Office received the written appeal from Annie's attorney on February 23, 2017. Steve McFadden then filed his appeal on February 28th.

LWBJ gave notice by phone call late in the day on February 28, 2017 that it would not pursue the street use permit and wished to withdraw from the process. So as it stands the street use team's decision is to award the street use permit to Steve McFadden's corporation, DH50 Walnut, LLC, provided he submits the required petition with 60% of the business owners approving of the event.

However, if Mr. McFadden does not obtain those signatures, the City Council could allow the permit to be issued absent the required signatures on his petition. The relevant ordinance section states, "Applications with petitions that do not have more than 60% approval pursuant to this section will be denied unless appealed pursuant to section 102-1133 of this division." City Code section 102-1125(c)(3).

Council's decision is a final determination by the City which is subject to appeal in the District Court of Polk County. Municipal Code section 102-1133.

PREVIOUS COUNCIL ACTION(S): NONE

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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