

.....
Date May 21, 2012

RESOLUTION DENYING APPEAL BY TONY DASSAN FOR RELIEF FROM MORATORIUM TO ALLOW CONSIDERATION OF HIS APPLICATION TO SELL ALCOHOLIC LIQUOR FOR OFF-PREMISES CONSUMPTION AT THE BP SERVICE STATION (a/k/a SUPER STOP) AT 727 SE 14th STREET

WHEREAS, on April 9, 2012, by Roll Call No. 12-0572, the City Council established a temporary moratorium extending until June 26, 2012, on the commencement of any new business and on the conversion of any existing business to one selling alcoholic liquor for off-premises consumption, from any business premises which is operated as a Limited Food Sales Establishment, Limited Retail Sales Establishment, Gas Station/Convenience Store or Liquor Store; and,

WHEREAS, Roll Call No. 12-0572 further provides that any party may, by written application to the City Clerk request relief from the effect of the moratorium where necessary to avoid undue hardship; and,

WHEREAS, on April 23, 2012, Tony Dassan, through counsel, filed an application with the City Clerk seeking relief from the moratorium to allow him to seek the necessary approvals to engage in the business of selling alcoholic liquor for off-premises consumption at the BP service station (also known as the Super Stop) at 727 SE 14th Street, being at the intersection of SE 14th and Maury Streets; and,

WHEREAS, on May 7, 2012, by Roll Call No. 12-0698, it was duly resolved by the City Council that the application of Tony Dassan for relief from the moratorium as applied to the premises at 727 SE 14th Street, be set down for hearing on May 21, 2012, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on May 10, 2012, setting forth the time and place for such hearing; and,

WHEREAS, in accordance with said notice those interested in the application, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

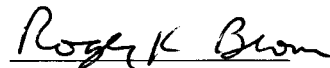
1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the application for relief from the moratorium are hereby sustained, and the hearing is closed.
2. The City Council hereby makes the following findings:
 - a) Until July 1, 2011, Iowa law prohibited the sale of alcoholic liquor from any premises where gasoline was sold, and many gas stations/convenience stores continue to operate successfully in the City of Des Moines without the sale of alcoholic liquor.

Date

- b) On October 25, 2011, Tony Dassan applied for a Class E Liquor Control License for the BP service station and the application received all necessary staff approvals. That application was not presented to the City Council because Tony Dassan did not pay the required fees, and the application was voluntarily withdrawn by Tony Dassan on February 20, 2012.
 - c) Tony Dassan has NOT demonstrated to the City Council's reasonable satisfaction that a gasoline station cannot be profitably operated at 727 SE 14th Street without the sale of alcoholic liquor.
 - e) The moratorium is not causing Tony Dassan an undue hardship under the unique circumstances of this case.
3. The application of Tony Dassan for relief from the moratorium as applied to the business at 727 SE 14th Street is hereby denied.

MOVED by _____ to adopt and deny the application for relief from the moratorium.

FORM APPROVED:


Roger K. Brown
Assistant City Attorney

C:\Rog\Zoning\Moratorium\2012 Liquor\Dassan\RC hrg.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

_____ Mayor

_____ City Clerk

52A/B

PARRISH KRUIDENIER DUNN BOLES GRIBBLE
PARRISH GENTRY & FISHER L.L.P.
LAWYERS

ALFREDO FARRISH
ELIZABETH KRUIDENIER
ANDREW J. DUNN
MATTHEW M. BOLES
CHARLES E. GRIBBLE
ERIC KENYATTA PARRISH
TAMMY WESTHOFF GENTRY
THOMAS G. FISHER JR.
MARGARET R. STUART

BRANDON BROWN
JENNIFER OETKER
BENJAMIN D. BERGMAN
ADAM C. WITOSKY
LUKE M. DESMET
ROBERT P. MONTGOMERY
OF COUNSEL
*ALSO LICENSED IN ILLINOIS

2910 GRAND AVENUE · DES MOINES, IOWA 50312-4205
(515) 284-5737 · (800) 532-1405 · FAX (515) 284-1704 · PARRISHLAW.COM

Sent via Facsimile -- Original Mailed

April 23, 2012

Honorable Frank Cownie
Mayor
400 Robert D. Ray Drive
Des Moines, Iowa 50309

MR. Jeffrey Lester
City Attorney
400 Robert D. Ray Drive
Des Moines, Iowa 50309

Ms. Diane Rauh
City Clerk
400 Robert D. Ray Drive
Des Moines, Iowa 50309

RE: BP Station
Southeast 14th Street

Dear Mayor Cownie, Mr. Lester and Ms. Rauh:

I represent Tony Dassan who owns a service station on Southeast 14th Street. Mr. Dassan has been the owner of the station for some time. He currently holds a beer license that is both current and active. At one point, the station had a liquor license. Mr. Dassan had leased the building to a tenant who had the liquor license but did not pay Mr. Dassan his adequate fee for the lease. Mr. Dassan had to take the business back over. The individual who owned the liquor license on Southeast 14th turned the liquor license in without notifying Mr. Dassan. Mr. Dassan wanted to take over the liquor license but did not file it promptly.

Currently, Mr. Dassan is aware of the fact the city has imposed a moratorium on the issuance of liquor license. However, we are aware that the city has indicated that we may file a written application to the city clerk requesting relief from the effect of this moratorium when necessary to avoid an unnecessary hardship. We are making this application for you to consider in order for Mr. Dassan to avoid an unnecessary

52A/B

PARRISH KRUIDENIER DUNN BOLES GRUBBLE
COOK PARRISH GENTRY & FISHER L.L.P.
LAWYERS

Mayor Cownie
Jeffrey Lester
Diane Rauh
April 23, 2012
Page Two

hardship. It was Mr. Dassan's intent to obtain a liquor license. He qualifies for the liquor license and has been granted one in the past at other locations. The Southeast 14th Street store has no violations. Mr. Dassan would stay in compliance and is ready, willing and able to obtain the liquor license. We are asking that you consider this an exception to the moratorium and would allow Mr. Dassan to obtain a liquor license in order to avoid an unnecessary hardship.

I am providing to you the financial information on USA Petroleum, L.L.C. This is the name of the company under which Mr. Dassan is operating his business at Southeast 14th Street. It is a gas station, retail outlet for snacks and also sells hard liquor and beer.

From July of 2011 through September 2011, with both the liquor license and beer license in existence, the business was doing very well. In October, because the liquor license was lost, the sales were reduced dramatically. Based upon the current financial numbers, the business is losing four thousand dollars (\$4,000.00) to six thousand dollars (\$6,000.00) every month. This prevents Mr. Dassan from being able to pay off Iowa State Bank and the Small Business Administration. Both of the loans are current at this time. It is because Mr. Dassan is borrowing money from other income and paying into the business at Southeast 14th Street.

Mr. Dassan has invested heavily into the business. As a matter of fact, Mr. Dassan bought a new diesel pump and made other major repairs. He has spent approximately thirty thousand dollars (\$30,000.00) to thirty five thousand dollars (\$35,000.00) in repairs. This is to upgrade the business and keep it in good condition.

Currently, Mr. Dassan's company is paying seventeen thousand dollars two hundred forty three dollars (\$17,243.00) every six months for property taxes. The total is thirty four thousand four hundred and eighty six dollars (\$34,486.00). The building is valued at approximately four hundred sixty five thousand five hundred and three dollars (\$465,503.00). He is not in a position to continue to pay the property taxes unless he receives some relief and is allowed to obtain a liquor license.

Mr. Dassan will not be able to continue paying the SBA and Iowa State Bank unless immediate relief is giving for him to obtain a liquor license to increase his income.

PARRISH KRUIDENIER DUNN BOLES GRIBBLE
COOK PARRISH GENTRY & FISHER L.L.P.
LAWYERS

Mayor Cownie
Jeffrey Lester
Diane Rauh
April 23, 2012
Page Three

I am submitting to you copies of his confidential financial information from Mehar Associates, P.L.C. Would you please review this and let me know your thoughts if Mr. Dassan can qualify as a hardship case and allow him to obtain the hard liquor permit to go along with his beer permit.

Thank you for your consideration and we look forward to having this matter placed upon the city council in order for us to present additional information to justify Mr. Dassan's business qualifying as a hardship.

Thank you for your continued cooperation.

Sincerely,

PARRISH KRUIDENIER DUNN BOLES
GRIBBLE PARRISH GENTRY & FISHER L.L.P.

BY:



Alfredo Parrish
aparrish@parrishlaw.com

AP:ly

Enclosures: Financial documents from Mehar Associates, P.L.C.

Copy to: Tony Dassan

S2A+B

USA PETROLEUM LLC
Income Loss Statement
July 2011 through February 2012

#349 F.006/007

	Jan - Sep 11	Oct - Dec 11	Jan - Feb 12	TOTAL
Ordinary Income/Expense				
Income				
Gas Sales	490,112.71	345,897.28	149,249.99	1,060,741.08
Initial Sales	321,946.15	198,993.92	603,650.19	1,143,990.07
Total Income	811,158.86	544,891.71	752,900.02	2,109,050.59
Cost of Goods Sold				
Gas Purchase	608,399.12	258,581.23	190,411.77	1,057,392.12
Initial Purchase	201,248.53	(30,283.04)	70,149.11	138,914.58
Total COGS	798,388.38	488,922.31	259,581.91	2,546,902.60
Gross Profit	11,770.48	57,919.40	493,318.11	643,008.00
Expenses				
Automobile Expenses	955.00	690.00	400.00	2,045.00
Bank Service Charge	1,425.00	390.00	390.00	2,205.00
Chemical & Maintenance	450.00	450.00	200.00	1,100.00
Gas, Electricity & Water	4,250.00	4,700.00	2,100.00	11,050.00
Insurance	3,000.00	3,000.00	2,800.00	8,800.00
Leasehold Improvements	30,000.00	30,000.00	20,000.00	80,000.00
License and Permits	1,500.00	1,000.00	1,000.00	3,500.00
Office Supplies	200.00	475.00	46.34	721.34
Payroll Expenses	18,150.00	18,150.00	17,100.00	53,400.00
Professional Fees	750.00	500.00	500.00	1,750.00
Property Tax	8,625.00	3,625.00	5,750.00	18,000.00
Repairs	1,250.00	1,250.00	700.00	3,200.00
Security Systems	450.00	450.00	300.00	1,200.00
Telephone	500.00	500.00	400.00	1,400.00
Minor Maintenance	450.00	450.00	300.00	1,200.00
Total Expense	68,478.76	89,750.76	45,548.34	203,777.86
Net Ordinary Income	33,291.72	-31,831.36	347,769.77	34,729.13
Net Income	33,291.72	-31,831.36	347,769.77	34,729.13

- Notes:
- July thru Sep business had income and business was doing alright.
 - Oct - business had the losses and sales went down drastically.
 - Based on above numbers, business is heading all to six every month.
 - All the above numbers are actual. Rounded off - just to keep the figures simple and business takes deductions only when actually makes payments. But items shown out evenly thru out the year.
 - All the above numbers are operational expenses only. Nothing included as repair or any other purchase.
 - For example business bought new diesel pump and spent another \$5,000, not included here.
 - It means if you ask Depreciation and amortization, losses are way higher than reflecting in statement.

From: PARRISH KRUIDENIER LAW FIRM

04/23/2012 13:22

Income Loss Statement
July 2011 through February 2012

	July - Sep 11	Oct - Dec 11	Jan - Feb 12	TOTAL
Ordinary Income/Expense				
Income				
Gas Sales	490,112.71	345,957.89	188,599.89	1,860,741.09
Inside Sales	321,048.15	199,953.82	103,890.13	1,145,950.07
Total Income	811,158.86	545,941.71	292,490.02	3,006,691.16
Cost of Goods Sold				
Gas Purchase	508,350.12	358,561.25	189,411.77	1,923,234.51
Inside Purchase	201,548.53	130,361.06	70,180.14	733,999.32
Total COGS	709,898.65	488,922.31	259,591.91	2,657,233.83
Gross Profit	101,260.21	57,019.40	32,898.11	348,457.33
Expense				
Automobile Expense	600.00	600.00	400.00	2,800.00
Bank Service Charges	1,425.00	1,425.00	950.00	6,650.00
Cleaning & Maintenance	450.00	450.00	300.00	2,100.00
Gas, Electricity & Water	4,200.00	4,200.00	2,800.00	19,600.00
Insurance	3,000.00	3,000.00	2,000.00	14,000.00
Mortgage	30,000.00	30,000.00	20,000.00	140,000.00
Licenses and Permits	1,500.00	1,500.00	1,000.00	7,000.00
Office Supplies	229.74	479.38	48.34	1,464.58
Payroll Expenses	18,150.00	18,150.00	12,100.00	84,700.00
Professional Fees	750.00	750.00	500.00	3,500.00
Property Tax	8,625.00	8,625.00	5,750.00	40,250.00
Repairs	1,050.00	1,050.00	700.00	4,900.00
Security Systems	450.00	450.00	300.00	2,100.00
Telephone	600.00	600.00	400.00	2,800.00
Waste Management	450.00	450.00	300.00	2,100.00
Total Expense	68,479.74	88,729.38	45,546.34	319,964.58
Net Ordinary Income	32,780.47	-11,709.98	-12,648.23	28,492.75
Net Income	32,780.47	-11,709.98	-12,648.23	28,492.75

Notes :
Continue on Page 2

S2A+B

Income Loss Statement
July 2011 through February 2012

	July - Sep	10 Oct - Dec	11 Jan - Feb	12 TOTAL
Ordinary Income/Expense				
Income				
Gas Sales	490,112.71	345,857.89	188,599.89	1,860,741.09
Inside Sales	321,048.15	199,983.82	103,850.13	1,145,950.07
Total Income	811,158.86	545,941.71	292,490.02	3,006,691.16
Cost of Goods Sold				
Gas Purchase	508,350.12	358,581.25	189,411.77	1,923,234.51
Inside Purchase	201,548.53	130,361.08	70,180.14	733,999.32
Total COGS	709,898.65	488,922.31	259,591.91	2,657,233.83
Gross Profit	101,260.21	57,019.40	32,898.11	349,457.33
Expense				
Automobile Expense	600.00	600.00	400.00	2,800.00
Bank Service Charges	1,425.00	1,425.00	950.00	6,650.00
Cleaning & Maintenance	450.00	450.00	300.00	2,100.00
Gas, Electricity & Water	4,200.00	4,200.00	2,800.00	19,600.00
Insurance	3,000.00	3,000.00	2,000.00	14,000.00
Mortgage	30,000.00	30,000.00	20,000.00	140,000.00
Licenses and Permits	1,500.00	1,500.00	1,000.00	7,000.00
Office Supplies	229.74	479.38	48.34	1,464.58
Payroll Expenses	18,150.00	18,150.00	12,100.00	84,700.00
Professional Fees	750.00	750.00	500.00	3,500.00
Property Tax	8,625.00	8,625.00	5,750.00	40,250.00
Repairs	1,050.00	1,050.00	700.00	4,900.00
Security Systems	450.00	450.00	300.00	2,100.00
Telephone	600.00	600.00	400.00	2,800.00
Waste Management	450.00	450.00	300.00	2,100.00
Total Expense	68,479.74	68,729.38	46,548.34	319,964.58
Net Ordinary Income	32,780.47	-11,709.98	-12,648.23	29,492.75
Net Income	32,780.47	-11,709.98	-12,648.23	29,492.75

Notes :
Continue on Page 2

SZAB



**ZONING BOARD OF ADJUSTMENT
CITY OF DES MOINES, IOWA
DECISION AND ORDER**

This Decision and Order of the Board of Adjustment does not constitute approval of any construction. All necessary permits must be obtained before any construction is commenced upon the Property. A Certificate of Occupancy must be obtained before any structure is occupied or re-occupied after a change of use.

Any use allowed by this Decision and Order shall not be commenced or resumed until all the requirements imposed on such use by the Zoning Ordinance and this Order have been satisfied.

The use allowed by this Order must be commenced within **two years** or this Order will be void and of no further force and effect.

IN THE MATTER OF THE APPEAL FROM	:	DOCKET: ZON 2012-00039
	:	
USA PETROLEUM, LLC	:	PUBLIC HEARING: APRIL 25, 2012
	:	
ON PROPERTY LOCATED AT	:	
	:	
727 SOUTHEAST 14TH STREET	:	

SUBJECT OF THE APPEAL

Proposal: The Conditional Use Permit would allow the existing gas station/convenience store to sell alcoholic liquor. Since the business is operating as a gas station/convenience store, no more than 40% of revenue may be derived from sale of alcoholic liquors, wine, beer, and tobacco products.

Appeal(s): Conditional Use Permit for a business selling alcoholic liquor, wine, and/or beer.
Required by City Code Section 134-954

FINDING

It is appropriate to continue the hearing to May 23 to allow the appellant to request that the City Council consider relief of the moratorium on new Class E Liquor licenses for gas station/convenience stores.


DECISION AND ORDER

WHEREFORE, IT IS ORDERED that the appeal is **continued to the May 23, 2012 meeting of the Board.**

VOTE

The foregoing Decision and Order was adopted by a vote of 5-0, with all Board members present voting in favor thereof.

Signed and entered into record on May 2, 2012.



 Bill Gray, Chair



 Bert Drost, Secretary