



Roll Call Number

12-0822

Agenda Item Number

52A

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.

★ Roll Call Number

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Agenda Item Number

52A

-2-

Date May 21, 2012

- 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 Hensley to adopt and deny the application for relief from the moratorium.

FORM APPROVED:

Roger K. Brown
Roger K. Brown
Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE		✓		
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER		✓		
MOORE		✓		
TOTAL	4	3		

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.

T. M. Franklin Course
Mayor

Diane Rauh
City Clerk