

April 30, 2020

SPECIAL MEETING

The Board of Trustees of the City of Creede – a Town, County of Mineral, State of Colorado, met in regular session in the Creede Town Hall at the hour of 5:34 p.m. There being present at the call of the roll the following persons:

OFFICIALS PRESENT (via either phone or video conferencing): Trustee O’Connell
Trustee Hannah, Trustee Kehr, Mayor Larson, Trustee Wall, Trustee Brink, Trustee Freer
Mayor Larson, presiding, declared a quorum present.

Those members of staff also present were as follows:

Louis Fineberg, Manager
Sarah Efthim, City Clerk
Karen Lintott, Attorney

APPROVAL OF AGENDA

Trustee Wall motion to approved of Consent Agenda item A, Trustee O’Connell second. Mayor Larson declared the motion carried

PUBLIC COMMENT

PRESENTATIONS

CONSENT AGENDA

BOARD INFRMATION

NEW BUSINESS

- A. Public Hearing regarding Compliance with Stipulation on Renewal of Liquor License for Kip’s Grill, LLC, Dated March 3, 2020.

Mr. Hoffman, starts the public hearing regarding Kip’s Grill Mr. Hoffman, confirms
With City Clerk Sarah Efthim, this is a public hearing and Mr. Nagy, owner of Kips Grill, was notified by mail with in 10 day prior to the hearing and a Liquor License notice posted to Kips Grill. City Clerk Sarah Efthim replied yes. The meeting is open to the public and on April 15th, 2020 a letter was mailed to Mr. Nagy, and Liquor License notice was posted to Kips Grills, on April 15th, 2020.

Mr. Hoffman, “Members of authority the hearing tonight is vary simple on March 3 of this year this license authority approve a stipulation regarding a continuance of renewal of Liquor License, Mr. Hoffman ask that it be made on record as part of this hearing. The only issue in front of you tonight is weather the licensees Kips Grill has complied with section 4 subsection a with the stipulation and pursuant to section 4 subsection The licensees were to remove the enclosure of the license premise in its entirety by March 27, 2020 with the soul Exception of the roof structure and the structure including footers and the support post was to be verified by a Colorado license engineer after the structure was removed also by March 27, 2020. So, the only issue tonight Were those matters satisfied by Kip’s Grill, on the phone is Dan Naiman, is the building official for the city And with permission from the License authority I would like to ask Mr. Naiman, a couple question I think it might easiest as to put Mr. Naiman under oath and if any other our to testify to put them under oath at the same time. I’m not aware if the licensees is going to be here or anyone represent the licensees should be put under oath.

To Mr. Hoffman and Sarah I'm Vika Chandrashekar Representing Kips Grill, LLC I will not be testifying Since Mr. Hoffman ask if anyone here for the Licensee I wanted to inform that I am here I will mute until call upon or till I need to speak, I'll now allow Mr. Naiman to be sworn in . City Clerk Efthim ask Mr. Hoffman who needs to be sworn in, his response was only Mr. Dan Neiman, at this time and City Manager Louis Fineberg. City Clerk Efthim continued with swearing in. of Mr. Naiman and Mr. Feinberg. If I may at this time Miss Efthim Williamson to state for the record Kips Grill objection to this hearing of a basic matter before any testimony is taking. If I may be heard on this? Mr. Hoffman recommend that he be allowed to make is objection. City Clerk allowed him to proceed.

Thank You Cory thank you all as you know I'm Vika Chandrashekar I represent Kips Grill LLC, With respect to the Liquor License and related issues Mr. Hoffman, Mr. Naiman, Mr. Fineberg are all familiar with each other by this point I'm appearing today solely to state our position and specificity Kips Gill objection to the occurrence to the holding of this particular hearing. According to agenda the purpose of this hearing is to have a public regarding Kips Grill compliance with the stipulation for renewal of Liquor license dated March 3rd 2020 respectfully the Board of Trustee have no further jurisdiction and has no ability to determination compliance of the stipulation that determination was made through final agency action was taken on March 31 2020 on that date the City Attorney for the City Of Creede that Mrs. Karen Lintott. Sent a letter to Kips Grill stated among other things by operation of the Stipulation Mr. Nagy, Liquor Licenses is not renewing for good cause effective immediately. Its Kips Grill position that this constitute final agency action in that light and accordingly Kips Grill timely filed an appeal of that final agency action under rule 106 A 4 on Colorado rule of civil precursor on April 27th 2020 that was this past Monday, Among the entity named in our rule 106A 4 appeal more properly styled as a complaint the City of Creede as a hole and board of trustee that sit as the liquor licenses authority I would refer the city the board of trustee to the content of rule 106a4 complaint which sum up the entirety of Kips Grill position with respect to this hearing or any other decision has already being made concerning Kips Grill Liquor Licenses accordingly its Kips r opinion that this hearing is unnecessary inappropriate and most of its mute the final decisions has already been made and is subject to appeal at this. That's all I have to say at this time.

Mr. Hoffman, proceeded with question of witness Mr. Naiman,

Question-(Mr. Naiman, are you familiar with the stipulation of continuance that was shared with the group by video on March 3rd, 2020? Mr. Naiman answer: Yes I am,(Mr. Hoffman and are you familiar with the condition in section 4 sub section A, of that stipulation of conditions related to what the obligation to have completed by March 27th 2020?.Mr. Naiman Yes I am. (Mr. Hoffman: with reference specifically to sub section A of section 4 can you describe what was supposed to have occur by March 27th 2020 Mr. Naiman The wall is inclosing the Patio area of Kips Grill were to be removed in Its entirety, the only remaining structure was to be the roof and the supporting columns and beams covering the patio area: Mr. Hoffman: Was there anything else required of section 4 of sub section A, by March 27 Mr. Naiman he was to place snow stops and heat tape in the gutters to stop snow from falling on the sidewalk. He was also required to hire a structural engineer license in the State of Colorado to verify and report upon structural integrity Of the remaining roof structure. Mr. Hoffman: to your knowledge was a demolition permit for the work to be obtained) Mr. Neiman Yes sir: Mr. Hoffman: Was the work as of today April 30th 2020 that was the subject of the demolition permit completed) Mr. Naiman: Not in its entirety: Mr. Hoffman: can you be more specific why was it not completed in its entirety) Mr. Naiman: I can't speak to why it wasn't completed there is and existing drink rail and foot rail for a drink counter that faces the street and that was required to be removed and it had not been removed as of 3:30 today. Mr. Hoffman: Was the removal of the components you just describe part of the demolition permit. Mr. Naiman: yes Sir Mr. Hoffman: Did they City of Creede ever receive any sort of report from a Colorado license structural engineer consistent with the languish of section 4 sub section A? Mr. Naiman: not that I am aware Mr. Hoffman: I don't have any more question for Mr. Naiman. Mr. Hoffman Mr. Vika, do you have any question for Mr. Naiman? Mr. Chandrashekar: I have completed my participation in this hearing I'm solely listing to the remainder of the meeting, thank you Cory for asking Mr. Hoffman: Ok perfect I would ask to be aloud to ask Mr. Fineberg a couple question as well. Mr. Hoffman: Mr. Fineberg were you able to observe Kips Grill today? Mr. Fineberg: Yes. Mr. Hoffman

and the work that was completed by section 4 sub section A was it completed as of today? Mr. Fineberg the last I saw the drink rail and foot rail was still up, I do not believe the structural inspection has been completed either I defer to Mr. Naiman if has received that. I think he sated he did not. Mr. Hoffman question Mr. Fineberg what is your position with the City of Creede? Mr. Fineberg I am the town Manager Mr. Hoffman and what is Mr. Naiman position? Mr. Fineberg He is the building official. Mr. Hoffman you heard Mr. Naiman testified that he has not receive any report from a Colorado License structural engineer And to your knowledge the City of Creede has not receive any such report as well? Mr. Fineberg that is correct. Mr. Hoffman no further question for Mr. Fineberg. Mr. Hoffman I would also like to make the Creede licensing authority aware the letter consul for Kips, referencing which is now being shared a letter being dated March 31st, 2020 from Mrs. Lintott to Kips, I would just ask the authority be made aware that this letter base on the consul for Kips Identified earlier that this letter is dated March 31st 2020 according, to city clerk the notice of tonight hearing was provide to Kips Grill on April 14 or 15 of 2020, and based on consul for Kips Grill, the lawsuit was filed on April 27th 2020, I would suggest to the licensing authority what significant about this is Kips Grill, was on actual Notice of tonight hearing the stated purpose was to determine if there was any violation of the stipulation and Kips Grill none the less determine to proceed Forward With the litigation and makes it objection to the proceeding as opposed to proceeding forward Addressing if the stipulation had been complied with, I would also point out in the stipulation its self-there is a reference in section A, to this matter whether this matter having been continue to April 7th 2020 I think it's important the Creede, board of trustees recognize that April 7th 2020 date came and went it was not an the agenda that evening that is the bases for City Of Creede, re-noticing the hearing tonight, and giving Kips Grill, opportunity to respond to whether or not it had complied with the conditions set forth by the stipulation by

March 27th, 2020. You have heard from Kips Grill, they our objecting tonight's hearing, sounds like they our unwilling to provide in additional information or rebut any of the claims made by Mr. Naiman or Mr. Fineberg. In writing Compliance with the stipulation so with that I do not have anything else to provide to the board. But I would ask that the notices provided by the city clerk both the written notice as well as the posted notice

In the March 3rd, 2020 stipulation and Mrs. Lintott letter dated March 31st, 2020 all be admitted as tonight's record of tonight hearing. Mayor Larson responds yes that is appropriate. Mr. Hoffman under your rules Order and conduct of public hearing if Kips desires to provide any additional information to authority now would be the time. Mayor Larson ask if applicant or his represented have the opportunity to provide testimony or any Information or would like to respond or comment on the town's presentation. Mayor Larson Sir, would you like to make any comments at all? Mr. Chandrashekar, thank you I will rest on my prior objection and the reason for it's my only comment is that Kips Grill dose participate further on the bases that this hearing is unnecessary inappropriate and most of its mute given Mrs. Lintott letter that now in the record thank you. Mayor Larson can we please His his comments put in the record? Mr. Hoffman yes ultimately this matter and this hearing will ultimately be following tonight hearing will be transcribed. we will have someone transcribe entire hearing it will be part of the record. Mayor Larson, the next part of this The counsel shell have the opportunity to ask technical question of the appropriate town staff and the attorneys participating in this meeting. Mayor Larson do any of the counsel have any questions? Trustee Hanna, what will our vote be on today what is the pacific vote? Mr. Hoffman once you have ask your question I will give a brief presentation ultimately that you find a stipulation or a non-compliance with the stipulation has occurred, because in the stipulation that's is now in the main part of the record. The licensee agrees that if he fails to comply with the conditions of the stipulation, he has admitted a good cause for non-renewal exists. You should have a draft order for your consideration that would make find of non-renewal based on the inability to comply with the stipulation. So it ultimately be finding good cause for non-renewal. Trustee Hanna yes I believe the email came from Louis that explains all that, another thing I I'm watching this meeting through an I phone 2 ½ x 4' screen and the previous meeting microphone didn't work Some people were booted off, its just and unusual platform it seen like a tough platform to make these kind of decision? Mr. Hoffman, I understand your right, communities across the state and the country Are trying to the best we can with the platforms in front of us. Trustee Hanna the lack of our resources dose this make it possible to table this discussion for a later time. Mr. Hoffman, you may certainly continue this if

you choose to, I suggest best on objection raised by Kips Grill they have already filed a lawsuit allegation the correspondence by Mrs. Lintott was a final decision we respectfully disagree, my recommendation is that you take action tonight based on the evidence before you but if you determine to continue it that your prerogative I would just recommend you continue to a date certain so everyone knows what the continuations date is. Trustee Hanna, Ok.

Mayor Larson, is there any more comments question by the counsel? We are now officially open the public hearing for public comment to allow members of public to make comments please keep your comments to less than 3 minutes. City Clerk Sarah should I go through each person login to the meeting and ask if they have any question? Mayor Larson yes please do. Trustee Brink I was muted during our question my question is to Mr. Dan Nieman why is the handrail and foot rail required to be removed? Mr. Nieman The enclosure increases the occupancy load for the restaurant to over 50 people, building code requires if you have over 50 people, you have to have two exits, there is only one exit in Kip's Grill, additionally by, enclosing the patio way he did he block any accessibility from entering the restaurant and that was another issue that needed to be resolved and removal of the enclosure was the easy and quick way to get resolution and bring the restaurant in to compliance. Trustee Brink Ok, City Clerk Sarah Eftim, ask each individual log in if they had any comment during the public comment, no one had any comment. Mayor Larson: the counsel is now open to discuss the merits of this topic and decide what action to take. Mr. Hoffman do you want to make any comments to the counsel at this time. Mr. Hoffman, Yes thank you, as I indicate at the beginning is that only issue is to determine if Kip's Grill, has complied with the stipulation dated March 3rd 2020 based on the statement from Mr. Nieman and Mr. Fineberg, I think it's undisputed and un rebutted that there has not been compliance with the March 3rd 2020 stipulation specifically the enclosure in its entirety has not been removed consistent with the stipulation and demolition permit and no report from a constructional engineer has been provided both that was to be done by March 27, 2020 accordingly I would respectfully request because Kip's Grill admitted in the stipulation that good cause existing that nonrenewal in the event he did not satisfy those conditions that you issue the order you have in front of you finding good cause for nonrenewal, Based on violation of the stipulation March 3, 2020. that's the request I will be happy to answer any questions.

Trustee Hanna, what would be necessary for him to fulfill his obligations, the last thing he has not done? I drive by that place every day I see the windows removed; I see their a bar. I hear their electrical tape not up but I have not climb around the ceiling of Kips. What would it take what's the number one thing that he has not completed? He has to move everything one-foot in. Mr. Hoffman, no he has not removed the drink rail, the bar rail, he hasn't provided report from a Colorado constructional engineer that indicated the structure including the footer is structurally safe the support post, after the demolition has been completed I would add one other thing Kips Grill, has already filed a lawsuit Kips Grill, is taking the position regardless of what you do the Liquor license has been un-renewed. We believe it's appropriate you go through the process tonight of having a full hearing giving the opportunity to respond before making the final decision. So the evidence you have before you that those two things have not yet been completed.

Trustee Hanna, what would be the benefit to Creede to completed all these projects? Mr. Hoffman according to the Inspection report that is reference the city building official believes the items have to be address in section 4 sub section A were the immitted life safety issue had to be rectified before this structure could be safely occupied. There is a host of other obligation he would have had till July 7th, 2020 to completed they were to address compliances with various codes were not immediate life safety issues. The issues tonight in section 4 sub section A were the immitted life safety issue according to Mr. Naiman. Trustee Hanna is Mr Naiman still with? Mr. Naiman yes, I am. Trustee Hanna. What is the life safety issues about having a bar there? Mr. Naiman Their Life safety issues with exiting from the restaurant, there's accessibility issues, it is not just a federal law, any building that does not have proper exiting is consider a danger building by the building code. A good number of our building codes we have today is based on tragedies based on situation just like this one. Trustee Hanna: Mr. Naiman have you ever been to Kips? Mr. Naiman Yes sir I have.

Trustee Hanna, I am looking at everything on a tiny screen on a phone sorry for the repeats.

Mayor Larson Is the counsel ready to make a motion? Trustee Wall, so this meeting was posted 15 days ago, and Kips Grill filed a lawsuit on April 27th, 2020 in regard to the March 31st letter from Karen, is that correct? Mr. Hoffman that is correct their taking the position that Mrs. Lintott, letter is final action by the Liquor

License Authority. It is the City's position that this is the hearing tonight was not the final action, so we re-noticed tonight, Trustee Wall okay thank you.

So the meeting was posted before the lawsuit, so this meeting was going to happen either way? Mr. Hoffman yes. Trustee Wall so this just making it we have it on record making it a board discussion and supporting Mrs. Lintott letter on March 31st. Mayor Larson negative this is about the stipulation only not about the letter. Mr. Hoffman, I think the distinction is that the stipulation contemplated having a April 7 hearing to make the final decision so this is that hearing but its tonight date. Trustee Wall it was scheduled for April 7th the meeting was moved because of election, the meeting was on April 9th if the board or staff can remind me why we didn't have the hearing at the April 9th meeting. Mr. Hoffman I can try and answer that it was and oversight the April 7th meeting did not occur, it couldn't occur April 9th because it was continue threw the notice the March 3rd date to April 7th ideal is everyone that was at the March 3rd date when the stipulation was approved everyone new based on the language of the stipulation final consideration would occur April 7 2020 it didn't happen it was an oversite. So in order to correct the oversite we had to reset the hearing to tonight we had to re-notice it so the public saw the notice posted on Kips building and Kip the notices he received in the mail knew that this hearing would be tonight . trustee Wall so this hearing would of taking place early April, we are just doing it today. Mr. Hoffman Yes. Trustee Hanna, you stated Kip has file a lawsuit is there any way to avoid this lawsuit? Trustee Hanna, This is only my second meeting My first meeting my microphone didn't work very few people responded to my texted Inquirers.

Mr. Hoffman, Kips lawsuit is challenging, what he believes was a final decision by Mrs. Lintott, letter to denied his liquor license, on behalf of the city, March 31st the direct answer to your question is if the city believes Kip, has complied with the stipulation or just ignore the stipulation and just simply renew his Liquor license, then I think this lawsuit would be mute. I don't think that staff, would recommend dew to the life safety issues, without compliance with the condition in the stipulations. Trustee Hannan. On who's recommendation? Mr. Hoffman, staff recommendation is the building official, town manager, based on the fact of the life safety issues he agreed to fix and did not fix by date. Trustee Hanna, yes.

Mayor Larson would anyone like to make a motion? Trustee Kahr motion the stipulation was not met. Mr. Hoffman, that would a motion to approve the order finding good cause for no renewal based on the finding of the stipulation on March 3rd, 2020. Trustee Kehr, Yes sir. Mayor Larson, ask do we have a second? Trustee O'Connell, second mayor Larson we have five in favor and one opposed the motion passes. Mayor Larson the public hearing is now closed. Mayor Larson, we need a motion to adjourn. Trustee Brink motion adjourn trustee Kehr second. Motion carries.