

## Freeze Out on 29<sup>th</sup> Ave. A Liquor Licensing Adventure

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The Prospect neighborhood behind Coors Field is transitioning from gritty industrial to 21<sup>st</sup> Century residential. Quickly occupied lofts are filling or replacing early 20<sup>th</sup> century warehouses. Services lag. In a few months Tye Lofts, a new residential rental building can have its ground floor retail space open for business.

Sara, an enterprising real estate agent, matches Stennis with Tye. Stennis wants to open a liquor store. Tye suggests a convenience store with beer and wine. Stennis says that's not my business.

Tye turns to KG. That's what I do he says. I've run 7-11s with 3.2 beer. A match is made. Needing a lawyer, KG comes to me. Colorado has a convenience store 3.2 beer license, but not a beer and wine liquor license. KG will split his space – half a convenience store; half a liquor store. A lease is negotiated.

The morning to sign the lease, Sara finds Stennis has gone a block down the street to a handsome but derelict warehouse. Stennis posted a notice that he's applied for a liquor store license. With perhaps a year's work, the warehouse can be restored to its former glory. Until then, Stennis can't open, but he'll shortly have a liquor license in his pocket.

Sara calls me. We both know the problem. The Denver zoning code prohibits liquor stores within 1,000 feet of each other. Historically Denver's zoning and liquor administrators have awarded the license to the applicant who files first. That will freeze out KG before he starts.

The process starts with a zoning use permit for a liquor store at Tye Lofts. The clerk looks through her computer data base, studies its graphical interface system, consults with her superior, collects \$20 and issues the use permit.

We file KG's liquor license application and set a hearing date. Friday afternoon a week later a zoning supervisor calls. We made a mistake, he says. We shouldn't have given you a use permit. Tye is within 1,000 feet of an address where we've already issued a liquor store use permit. I'm rescinding your permit.

Hold on, I almost calmly reply. Hold on. Take a look at the zoning language. It says a liquor store can't open within 1,000 feet of another liquor store. It doesn't say anything about 1,000 feet from where someone's applied for a liquor store license, or procured a zoning use permit, or thought about opening a liquor store. The language only applies to a real live liquor store

that's actually selling liquor. You made no mistake. You were required to issue the Tye use permit. Nothing gets rescinded until a store opens and sells some liquor. Then you can talk about rescinding the other use permit.

The supervisor is dubious. We only hand out one use permit per 1,000 feet. That's always been our policy. I disagree with you, but I'll let my boss make the decision. We part amicably.

Monday morning the zoning supervisor's email arrives, many people copied: This is to warn you that Tye's use permit will be rescinded if another store opens first. Good.

The next email comes from a Denver liquor licensing supervisor. Since your zoning use permit has been rescinded, your hearing is canceled. The next morning I'm standing outside the office as the doors unlock. Sherri and I chat. Sherri is exceedingly dubious. I don't think you're right, but I'm going to have my boss decide. Twenty minutes later, she's back. KG can have his hearing.

Stennis comes to the hearing. His landlord comes to the hearing. His neighbors come to the hearing. He has a petition with many signatures opposing Tye's application. Stennis and his neighbors testify. The City Attorney and Hearing Officer point out the reason for the hearing is to determine the reasonable needs and desires of the inhabitants of the neighborhood for a liquor store. The Hearing Officer doesn't decide which store. She finds out if the neighborhood wants and needs a store. Everybody agrees the neighborhood needs a store. Stennis and his neighbors want his store, not Tye's, but that can't matter to the hearing officer.

Two weeks later the Hearing Officer recommends approving Tye's application. The Director signs his approval. We're done, except . . .

Interested parties have ten days to object. Stennis does. A new Mayor is sworn in, a new Director appointed. He reviews the old Director's decision – and changes nothing. Tye will open in Prospect.

If you've got questions about liquor licenses, real estate issues, or general business law in the Denver, Colorado region, please visit us at [www.JoelJudd.com](http://www.JoelJudd.com).