

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-7934

File: 57-377174 Reg: 01051574

MAYACAMA FOOD and BEVERAGE, LLC dba Mayacama Golf Club
1123 Mayacama Club Drive, Santa Rosa, CA 95403,
Appellant/Applicant

v.

PAT and KEN MORSE
Respondents/Protestants

and

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Robert R. Coffman

Appeals Board Hearing: March 13, 2003
San Francisco, CA

ISSUED APRIL 30, 2003

Mayacama Food and Beverage, LLC, doing business as Mayacama Golf Club (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which sustained protests against its applications for a special on-sale general license and a controlled access cabinet permit for premises to be located on the grounds of a private golf club, and conditioned issuance of the license upon appellant's acceptance of conditions intended to reduce the amount of interference with residential quiet enjoyment.² The license permits the sale of alcoholic beverages only to members of

¹The decision of the Department, dated January 10, 2002, is set forth in the appendix.

² The application sought a person to person and premises to premises transfer and the exchange of an on-sale general eating place license for a special on-sale general license.

the club and their guests. The license does not permit the club to be open to, or to serve, the general public.

Appearances on appeal include appellant Mayacama Food and Beverage, LLC, appearing through its counsel, Beth Aboulafia, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean R. Lueders.

FACTS AND PROCEDURAL HISTORY

Appellant operates a golf club on its property in a rural area in Sonoma County, approximately seven miles west of the City of Windsor. Windsor is a small community north of Santa Rosa near Highway 101. Protestants Pat and Ken Morse, as well as several other individuals who filed protests but did not appear at the hearing, live in residences which border on the golf course.

The club will occupy approximately 675 acres, and will include a golf course, 31 home sites, approximately 50 casitas, a parking area, a club house, and a large wooded area adjacent to the golf course. (Finding of Fact 2.) The golf course is Jack Nicklaus-designed. Carts will not be used on the course. The club house, which appellant tells us is not yet constructed, will be a 37,000 square foot structure, housing a pro shop, a small fitness center, dining facilities and lounge area, and a small second story spa facility. A basement cellar will be used for storage and a wine cellar.

Membership in the club is by invitation only, and will be limited to preserve a retreat-like environment. Although 600 memberships will be issued, only 20 percent will live in the area.

Department investigator Kevin Donnelly testified that, after inspecting the property and talking to the then protestants, he recommended that the license issue, subject to three conditions that he proposed and the applicant agreed to accept.

Appellant has been serving alcoholic beverages under a temporary permit issued by the Department since the golf course opened in August, 2001.

The three conditions, which the applicant agreed to accept, are as follows:

1. *Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 8:00 A.M. and 11:00 P.M. Sunday through Thursdays and 8:00 A.M. to 12:00 midnight on Friday and Saturday. The petitioner may also allow the sales, service, and consumption of alcoholic beverages between the hours of 8:00 A.M. to 12:00 midnight on the following days: On New Years Day, Christmas Eve, Christmas Day, Fourth of July, and the evenings before national holidays, including Sunday evenings before Monday holidays. In addition, the petitioner may allow the sales, service and consumption of alcoholic beverages between the hours of 8:00 A.M. and 1:00 A.M. on New Years Eve. The petitioner may also host up to 12 member events per year which will be identified upon the request of the Department. When these member events occur the petitioner may allow the sale, service, and consumption of alcoholic beverages between the hours of 8:00 A.M. to 12:00 midnight.*

2. *No sales of alcoholic beverages shall be made on the golf course from a cart after 6:00 P.M. any day.*

Petitioner shall furnish two additional keys and/or passes to the Department of Alcoholic Beverage Control. Such keys or passes shall not be marked or prepared in any manner so as to distinguish the bearer's official capacity. In addition, such keys or passes shall contain random, non-consecutive numbers, various dates of issuance and shall not be identified on any membership lists so as to distinguish the listed member's official capacity.

Only one of the five protestants - Pat Morse - appeared at the hearing.³ She testified on her own behalf, but presented no other witnesses. Following the hearing, the Administrative Law Judge (ALJ) issued a proposed decision, which the Department adopted, in which he concluded that operation of the premises would interfere with residential quiet enjoyment, and conditioned the issuance of the license upon appellant's acceptance of one additional condition and modifications to two of the three

³ The ALJ dismissed the protests of three of the four protestants who did not appear at the hearing, but assumed that Pat Morse was also appearing and testifying on behalf of her husband, sustaining his protest along with hers. We cannot say his assumption was unreasonable.

original conditions which the appellant had agreed to accept.

Except for New Years Eve, the ALJ reduced the time during which alcoholic beverages could be sold, served or consumed by one evening hour. He reduced from 12 to 6 the number of member events permitted, but did not alter the hours during which alcoholic beverages could be sold, served, or consumed at those events. The ALJ amended the limitation on sales from a cart to include the furnishing of alcoholic beverages, and inserted an entirely new condition:

3. Entertainment provided after 10:00 P.M. shall not be audible beyond the area under the control of the licensee. The use of amplifying system or device is prohibited after 10:00 P.M. in any outdoor area, including any deck, patio, terrace or courtyard. The use of any such system or device inside the premises (clubhouse) after 10:00 P.M. shall not be audible beyond the area under the licensee's control.

Appellant contends that the determination that issuance of the license without the new or modified conditions will interfere with the protestants' quiet enjoyment of their property is not supported by substantial evidence.

DISCUSSION

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (*Universal Camera Corp. v. Labor Bd.* (1951) 340 U.S. 474, 477 [95 L.Ed. 456, 71 S.Ct. 456] and *Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "resolve conflicts in the evidence, or between inferences reasonably deducible from the evidence." (*Brookhouser v. State of California* (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr.2d 658].)

Appellant tells us that the "sum total" of the protestants' evidence is the following: from her yard, protestant Morse can hear golfers conversing on the second hole of the golf course, and from her yard she has been able to hear the noise of construction equipment, and on one occasion heard a construction worker at the site of the proposed clubhouse shout an expletive.

We have carefully reviewed the testimony of protestant Morse, as well as that of Department investigator Donnelly, with our focus on potential noise associated with the sale, service or consumption of alcoholic beverages at the proposed clubhouse or from the beverage cart, and its potential impact on the Morses and their neighbors.

Investigator Donnelly estimated the distance from the residence of the protestants to the proposed clubhouse to be "well over 800 feet," [RT 36-37], and from their residence to the licensed area closest to the second tee, the closest edge of the licensed premises, as between 300 and 400 feet. Investigator Donnelly said the golf course cannot be seen from the protestants' residence because of heavy brush.

Investigator Donnelly testified that he and his supervisor were at the Morse residence, and could hear the normal conversation of workers at the second hole. This was prior to the issuance of the temporary permit. Protestant Morse also testified that she heard the workers' conversations.

It appears that the ALJ made little or no attempt to relate the noise complained of to the sale, service, or consumption of alcoholic beverages. In all likelihood, most of the drinking will take place in the club house or adjacent patio, and, after 6:00 p.m., that

is the only place where drinking will occur, because of the 6:00 p.m. cutoff on the beverage cart. The club house location is, according to the estimates of the Department investigator, well over 800 feet from the protestants, and, according to Dale Harding, one of the managing partners of the developer of the club, 1100 feet. The conversations that were heard, as well as the noise from the grooming equipment and the shout of a worker at the club house construction site have no relationship to the sale, service or consumption of alcoholic beverages, and could occur whether or not a license issued.

The ALJ's assumption that it is "very likely" that the noise generated from activities at the club will greatly exceed the noise from the premises that is currently audible to the protestants is, we think, grossly speculative. The club house is at least twice the distance from the residence of the protestants as the second tee - "well over 800 feet" according to the investigator's estimates - and most of the activities involving the sale, service and consumption of alcoholic beverages are likely to take place in the clubhouse.

The Department may impose "reasonable conditions" on a license under the authority of Business and Professions Code section 23800, subdivision (a), which provides that "If grounds exist for the denial of an application for a license or where a protest against the issuance of a license is filed and if the department finds that those grounds may be removed by the imposition of those conditions" the Department may grant the license subject to those conditions. Section 23801 states that the conditions "may cover any matter . . . which will protect the public welfare and morals"

We view the word "reasonable" as set forth in section 23800 to mean reasonably related to resolution of the problem for which the condition was designed. Thus, there

must be a nexus, defined as a "connection, tie, link,"⁴ in other words, a reasonable connection between the problem sought to be eliminated, and the condition designed to eliminate the problem.

We are persuaded that the nexus between the perceived problem and the remedy - the most significant aspect of which is the reduction in hours of operation - has been exaggerated. We do not believe the connection between the proposed activities in the club house, which will take place a considerable distance from the protestants' residence, and the potential for noise from those activities interfering with residential quiet enjoyment warrants such a reduction. Nor do we think the evidence supports a restriction on unamplified noise that may escape the bounds of the premises. On the other hand, the restriction on the use of an outside amplification system or device may be appropriate, and of little impact on appellant, since its representative has testified that the club does not intend to have any outdoor amplification system. The new condition appears reasonable to that extent, but only to that extent.

In addition, we do not see how the addition of the word "furnishing" to the condition limiting the hours of sale permitted from a cart can be said to be unreasonable, since it appears merely to close a potential loophole in a condition that appellant had already agreed it would accept.

ORDER

The decision of the Department is reversed and the case is remanded to the Department for such further proceedings as may be appropriate in light of our

⁴See Webster's Third New International Dictionary, 1986, page 1524.

comments herein.⁵

TED HUNT, CHAIRMAN
E. LYNN BROWN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ This final decision is filed in accordance with Business and Professions Code §23088 and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may, before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.