STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kan Enterprises, Inc., d/b/a A 1 Food Stores, Petitioner, v. South Carolina Department of Revenue, Ellen Fishburne Triplett, Keith McIver, Samuel L. Munson, Jocelyn Munson, and Michael Hill, Respondent.	Docket No. 14-ALJ-17-0571-CC **AMENDED FINAL ORDER AND DECISION**

APPEARANCES:

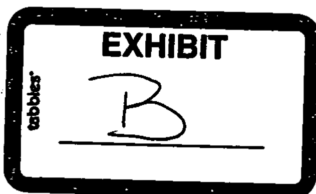
For Petitioner: Kenneth E. Allen, Esq.
For Respondent Department of Revenue: Justine M. Tate, Esq.
For Remaining Respondents:[1] Kathleen McDaniel, Esq.

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. §§ 61-2-90, -100(A), -260 (2009); 61-4-520, -525 (2009); and S.C. Code Ann. §§ 1-23-310 et seq. (Supp. 2014) for a contested case hearing. Petitioner Kan Enterprises, Inc., d/b/a A 1 Food Stores (Petitioner or Store) is seeking renewal of its seven-day off-premises beer-and-wine permit.

On July 31, 2014, Petitioner filed an application with Respondent South Carolina Department of Revenue (Department) for renewal of its seven-day off-premises beer-and-wine permit for A 1 Food Stores, located at 4101 Monticello Road, Columbia, South Carolina 29203. However, on December 10, 2014, the Department denied Petitioner's application based upon a

[1] Motions for Leave to Intervene were filed by the above-captioned Respondents (excluding the Department of Revenue) on January 22, 2015. On February 3, 2015, the Court granted these Motions to Intervene, and the Intervenors became Respondents in this case. However, for the sake of clarity, "Respondents" will henceforth refer to only the Intervenors and will not include the Department of Revenue.



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timely filed public protest. The Court held a hearing on February 10, 2015, at the offices of the ALC in Columbia, South Carolina.

The Court issued its Final Order and decision on February 20, 2015. Petitioner filed a Motion for Reconsideration[2] on February 27, 2015. By separate Order dated March 19, 2015, this Court granted the Motion for Reconsideration in part and denied it in part. The Court thus issues this Amended Final Order and Decision to incorporate additional conclusions of law.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of proof upon the parties, I make the following Findings of Fact by a preponderance of the evidence:

General Findings

Petitioner is seeking renewal of its seven-day off-premises beer-and-wine permit for A 1 Food Stores, located at 4101 Monticello Road, Columbia, South Carolina 29203. The Department received a timely filed protest to Petitioner's application. But for that protest, the Department would have granted the permit renewal.

Petitioner is headquartered in Atlanta, Georgia and is 100% owned by Hadiya Ahibhai, a resident of Atlanta Georgia. However, Petitioner, which has been licensed to sell beer and wine in South Carolina for at least the last two years, has a registered agent located in Columbia, South Carolina, and has a principal residing in South Carolina - the manager of the Store, Vinoo Sehgal. Mr. Sehgal has been the manager at the Store since November 2012. He has approximately seven years of experience managing in this type of business, and he has never had a permit revoked. Mr. Sehgal lives approximately three miles from the Store and spends approximately six to eight hours a day at the Store. There are no other managers at the Store.

Suitability of the Proposed Location

The Store operates from 5:00 a.m. to 2:00 a.m. on Sunday through Thursday, and twenty-four hours on Friday and Saturday. It is located in the Hyatt Park/Keenan Terrace neighborhood in the Eau Claire community of Columbia, South Carolina. The Store is adjacent to a residential care facility for "vulnerable adults," who are mentally ill and most of whom need supervision.

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2 Petitioner's Motion was a three part motion: for reconsideration, for a stay and for supersedeas.

The Store has caused several problems for the community and law enforcement. At the outset, the Store has a lot of foot traffic, which has resulted in issues with loitering. To address the problems with loitering, Petitioner has posted, on either side of the exterior of the Store, a sign providing notice that the property is under surveillance and prohibiting panhandling, public drunkenness, narcotics, and loitering.[3] Petitioner's security personnel also frequently "runs off" those who are panhandling and loitering. Nevertheless, problems with vagrancy and loitering are still witnessed there by neighbors and law enforcement. Moreover, vagrants and loiterers who do leave the Store, often proceed from there to an "alley" (the driveway of a daycare) adjacent to residential care facility where they engage in solicitation, "using the bathroom," and sexual acts. Loitering has also been a problem at the post office located across Duke Street from the Store.

Compounding this issue are numerous law enforcement problems that have emanated from the location. There have been 324 problems at the Store in 2014 (335 in the year before that), including civil disturbances, intoxicated pedestrians, and suspicious persons, all of which required "calls for service" – calls to 911 for which police are dispatched. For instance, Deputy Chief Melron Kelly relying on Respondent Intervenor's Exhibits 9-11, explained that the number of calls for service to the Store between the hours of 7:00 p.m. to 7:00 a.m. had increased from 209 in 2012 to 252 in 2014. Law enforcement officers have also been injured at the Store during fights occurring while making arrests. In short, the Store has increasingly been an undue burden on law enforcement.

Petitioner asserts that it is trying to clean up the business. Petitioner has sought to discourage criminal activity, loitering, or drinking in the store or parking lot. To that end, Petitioner has hired a security guard who contacts law enforcement when there is a problem at the location. Nevertheless, the management of this business has exacerbated the law enforcement problems. An inordinately large portion of Petitioner's store is devoted to the sale of cigarettes and beer, especially in individual cans, which according to law enforcement, promotes panhandling. Adding to this concern, the Store appears to have once had windows, which are now opaque, and the only view to the inside of the Store is through the two glass front doors, both of which are almost entirely covered with large beer signs. This seedy appearance, which stands in contrast to that of the nearby Hess and Sunoco stores, further attracts those who

[3] Actually, the sign prohibits panhandling "sales."

are apt to loiter in the area. Therefore, while some of the above incidents may have been beyond Petitioner's control, Petitioner has created an environment at the Store that continues to attract the kind of element that has caused the undue burden on law enforcement.

In contrast, the nearby Sunoco station, which is located approximately two blocks away, had posed an undue burden to law enforcement while it was operated under different management. But when Sunoco began operating the location, the management made improvements after a safety meeting with law enforcement which dramatically improved the problems at the location. However, Petitioner has made no such improvements.

Mr. Sehgal testified that he tells his employees to check the identification of customers seeking to purchase alcohol or tobacco. However, Petitioner still does not provide any formal training for the sale of alcohol and tobacco to minors, even though Petitioner has also had a South Carolina Law Enforcement Division (SLED) alcohol violation for sale of alcohol to a minor. Indeed, as a result of that violation, Petitioner simply warned the employee who sold alcohol to the minor, but did not punish him.

Moreover, the community around the Store has made efforts to improve the area such that the Store's condition, which has not improved, has now become a detriment to the community by stymieing those efforts, and is thus a less suitable location for the sale of beer and wine. For instance, Sam Davis, a city councilman for the area at issue, testified that there had been a business interested in a vacant building that had formerly been a dry cleaner but that the business declined to invest because of the foot traffic the destination of which was the Store. Also, littering occurs quite regularly and frequently at the Store's property. The fact that Petitioner has to clean up litter on its property so often (three times a day) is a reflection of the litter problem that the Store spawns. It is also reasonable to infer that given the amount of littering that occurs on Petitioner's property, a significant portion of the litter in the surrounding neighborhood emanates from Petitioner's patrons.

For the above reasons, I find that the Store poses a constant and increasing undue burden on law enforcement and has become a detriment to the surrounding community since its last renewal, and has thus become less suitable to sell beer and wine. Therefore, I conclude that Petitioner's application for its seven-day off-premises beer-and-wine permit should be denied.

CONCLUSIONS OF LAW

S.C. Code Ann. §§ 61-4-520 and -540 (2009) generally set forth the requirements for the issuance of a beer-and-wine permit. Section 61-4-520(5) provides that the location of the proposed place of business must be a proper one.

Although "proper location" is not statutorily defined, the ALC is vested, as the trier of fact, with the authority to determine the fitness or suitability of a particular location. *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 118 (1981). The determination of a "proper location" is not necessarily a function solely of geography. *Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 249, 317 S.E.2d 476, 478 (Ct. App. 1984). Rather, in making that determination, the ALC "may consider any evidence adverse to the location." *Kearney v. Allen*, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985). It involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact upon the community within which it is to be located. *Id.* at 327; 338 S.E.2d at 337. It is also relevant to consider whether the proposed location has been previously approved for a permit or license and whether its suitability has altered over time. *See Smith v. Pratt*, 258 S.C. 504, 508, 189 S.E.2d 301, 302 (1972); *Taylor v. Lewis*, 261 S.C. 168, 171-72, 198 S.E.2d 801, 802 (1973); *Byers v. S.C. Alcoholic Beverage Control Comm'n*, 281 S.C. 566, 569, 316 S.E.2d 705, 707 (1984).

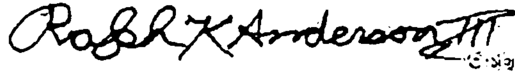
"A liquor license or permit may also be properly refused on the ground that the location of the establishment would adversely affect the public interest, that the nature of the neighborhood and of the premises is such that the establishment would be detrimental to the welfare . . . of the inhabitants, or that the manner of conducting the establishment would not be conducive to the general welfare of the community." 48 C.J.S. *Intoxicating Liquors* § 121 at 501 (1981). Nevertheless, without sufficient evidence of an adverse impact on the community, the application must not be denied if the statutory criteria are satisfied. The fact that a Protestant objects to the issuance of a permit is not a sufficient reason by itself to deny the application. See 45 Am. Jur. 2d *Intoxicating Liquors* §162 (Supp. 1995); 48 C.J.S. *Intoxicating Liquors* §119 (1981). Furthermore, in considering the suitability of a location, it is relevant to consider whether the testimony in opposition to the granting of a license is based on opinions, generalities, and conclusions, or whether the case is supported by facts. *See Smith*, 258 S.C. at 508, 189 S.E.2d at 302; *Taylor*, 261 S.C. at 171, 198 S.E.2d at 802.

ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that Petitioner's application for a seven-day off-premises beer-and-wine permit is **DENIED**.

AND IT IS SO ORDERED.

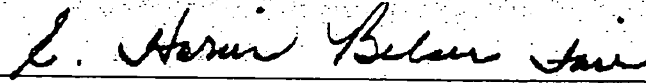


Ralph King Anderson, III
Chief Administrative Law Judge

March 19, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

March 19, 2015
Columbia, South Carolina

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STATE OF SOUTH CAROLINA
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Kan Enterprises, Inc., d/b/a A 1 Food Stores, Petitioner, v. South Carolina Department of Revenue, Ellen Fishburne Triplett, Keith McIver, Samuel L. Munson, Jocelyn Munson, and Michael Hill, Respondent.	Docket No. 14-ALJ-17-0571-CC **ORDER ON MOTION FOR RECONSIDERATION, FOR A STAY AND FOR SUPERSEDEAS**

This matter is before the South Carolina Administrative Law Court (Court or ALC) upon a motion filed by Kan Enterprises, Inc., d/b/a A 1 Food Stores (Petitioner or Store) seeking the Court to reconsider its February 20, 2015 order (Order) denying Petitioner's application for renewal of its seven-day off-premises beer-and-wine permit for A 1 Food Stores, located at 4101 Monticello Road, Columbia, South Carolina 29203, or in the alternative, to stay the Court's Order, or in the alternative, to grant supersedeas pursuant to Rule 241 of the South Carolina Appellate Court Rules (SCACR).[1]

I will address the allegations of error contained in Petitioner's Motion and do so in the order in which Petitioner made them. Some of Petitioner's arguments warrant clarification or amendment of the original Order. Accordingly, I am issuing an Amended Order in this case to reflect such clarifications or amendments.

DISCUSSION

Petitioner moves under Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) and Rule 68 of the Rules of Procedure for the Administrative Law Court (ALC Rules) to reconsider and amend the Order entered February 20, 2015. *See* ALC Rule 29(D) ("Any party may move for reconsideration of a final decision of an administrative law judge in a contested

[1] Though Petitioner filed one document, the Court will treat the document as three separate motions – one for reconsideration, one for a stay of the proceedings, and one for supersedeas.

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case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP."). The Court notes that "[i]f an issue could have been initially presented to the trial court, a party cannot raise that issue for the first time in a post-trial motion." *S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App.1995). A party cannot use a Rule 59(e) motion to present an issue to the court that could have been raised prior to judgment but was not so raised. *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005); *RRR, Inc. v. Toggas*, 378 S.C. 174, 185, 662 S.E.2d 438, 443 (Ct.App.2008) ("[A] party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not.").

Application of Incorrect Standard

Citing *Taylor v. Lewis*, 261 S.C. 168, 198 S.E.2d 801 (1973) and *Byers v. S.C. Alcoholic Beverage Control Comm'n*, 281 S.C. 566, 316 S.E.2d 705 (1984), Petitioner first argues that this Court applied the wrong standard in determining this matter. Specifically, Petitioner contends the Court used the standard for an initial application for a beer-and-wine permit, rather than the standard for renewal of an existing permit. However, that argument is incorrect. During the hearing the Court informed the parties that it would be considering the case pursuant to the holding of *Taylor v. Lewis*. Furthermore, the reasoning of *Taylor v. Lewis* was also considered in reaching the decision in this case and set forth in the Decision. Nevertheless, the holding in *Taylor v. Lewis* did not dissuade this Court that the permit should be denied.

Petitioner argues that there was no evidence presented that the Store's location is any less suitable now than during the time that it has held its permit and since its last renewal. However, contrary to Petitioner's argument, there was evidence in this case of an increase of law enforcement's responses to the Store's location. As explained in the Decision and Order (Decision), on January 25, 2014, Petitioner was fined for selling beer to a minor, yet the employee who sold the beer was not penalized and Petitioner still provides no formal training to its employees about the sale of alcohol and to tobacco to minors. Furthermore, the Decision has been amended to reflect that Deputy Chief Melron Kelly, relying on Respondent Intervenor's Exhibits 9-11, which were admitted without objection into evidence, testified that the number of calls for service to the Store between the hours of 7:00 p.m. to 7:00 a.m. had increased from 209 in 2012 to 252 in 2014.

Moreover, *Taylor* and *Byers* do not stand for the proposition that businesses that continue to have problems with littering, loitering, and other activities requiring constant calls to law enforcement without any noticeable improvements can simply continue to operate in like manner as long as they were able to get permitted under like conditions beforehand.[2] Such an absolute rule would allow locations that have become a nuisance to the community and a burden to law enforcement to continue adversely affecting the community under the theory that their aberrant behavior is vested. Under Petitioner's theory, the Court can not consider the improvement of the community around a location in determining the renewal of a permit or license involving alcohol because a prior determination of suitability renders the surrounding community's condition irrelevant.

For instance, Petitioner argues that there was no showing the area around its business has changed significantly since the last renewal. However, efforts had been made to bring in new investments/businesses to the area but that they fell through because of the conditions of the neighborhood. The Court's Decision intended to reflect that Petitioner's location is less suitable since its last renewal by failing to make improvements in an area that is trying to improve, thus "becom[ing] a detriment to the community by stymieing those efforts" to improve. Additionally, the Decision has been amended to reflect that Sam Davis, a city councilman for the area at issue, explained that there had been a business interested in a vacant building that formerly housed a dry cleaner but that the business declined to invest because of the foot traffic.

Reliance on Unsubstantial Evidence

Petitioner argues that the vagrancy and loitering that the Court cited were not at the store but in an alley adjacent to it. Also, Petitioner argues that a nearby Hess and Sunoco and a store adjacent to Petitioner's Store, which also sell beer and wine for off-site consumption, could have contributed to and/or caused this loitering. Petitioner further contends that the solicitation, using the bathroom, and sexual acts that the loiterers in the alley engage in could just as easily occur if there were no businesses in the area selling beer and wine. Petitioner finally argues that the only evidence linking Petitioner to these activities or to litter in the neighborhood is based on

[2] At the hearing, Petitioner emphasized the improvements that it was making to the Store. However, under Petitioner's theory, no improvements would ever need to be made to the location as long as it was not worse than it was the last time it applied for a permit.

"speculations and opinions of those who showed up at the hearing to protest the renewal of the Petitioner's license."

First, "those who showed up at the hearing to protest" were members of a community that is impacted by the Store, and witnesses of activities impacting their community. Second, as the Decision has been amended to reflect, Petitioner's own witness, Vincent Davis, testified that when he runs the panhandlers and loiterers off, some of them go to the alley that is behind the Store; in fact, it happens frequently enough that this is where he directs police if he calls the police on a loiterer or panhandler who then walks off before the police arrive. Indeed, the fact that Petitioner is frequently running off loiterers indicates that the Store has an atmosphere that fosters loitering and panhandling and is a source of the loitering occurring in the alley. Moreover, the Court also relied upon photographs of Petitioner's Store in determining that its "seedy appearance, which stands in contrast to the Hess and Sunoco stores, further attracts those who are apt to loiter in the area."

Third, as the factfinder in this case, the Court is entitled to determine the credibility of the witnesses, and to weigh direct evidence and any inferences to be drawn from testimony that is circumstantial. *See Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 465, 494 S.E.2d 835, 843-44 (Ct. App. 1997) (noting that it is for the finder of fact to weigh the evidence, determine the credibility of witnesses, and determine what parts of a witness's testimony it wishes to believe); *State v. Needs*, 333 S.C. 134, 156 n.13, 508 S.E.2d 857, 868 n.13 (1998) ("The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. . . ." Here, aside from Petitioner's own witness's testimony as to where many of the loiterers and panhandlers go after he drives them off, other witnesses testified from their own observations of loiterers regularly appearing in the alley adjacent to Petitioner's property. It was thus reasonable to infer that most of these loiterers came from Petitioner's adjacent property after they were driven away from Petitioner's property, especially since loiterers, by their very nature, are individuals who elect to stand around. Therefore, I find it unlikely that these loiterers were walking from the Hess and/or Sunoco stations or the store across the street from Petitioner's Store.[3]

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[3] As will be discussed *infra*, there was no testimony provided about the operation of the store across from Petitioner's store. A case regarding its permitting was referenced several times. but this case was not presented for

Finally, as to litter, the Court did not just rely on the testimony of Respondent Intervenors but also on Petitioner's manager's testimony to draw an inference about Petitioner's litter problem on its own property but also its contribution to the litter problem in the neighborhood. The Court has amended the language in its Amended Decision to reflect this.[4]

Vested Interest under South Carolina Law

Petitioner argues that because it has held an off-premises beer-and-wine permit for approximately twenty years, and it has incurred expenses and obligations in reliance on the "proper and non arbitrary renewal of its license pursuant to the factors as set forth by South Carolina law and in reliance of these factors (and law) being properly applied." Petitioner asserts that this Court applied an arbitrary and capricious standard "tantamount to depriving the Petitioner of his vested property right without cause."

First, a beer-and-wine permit, unlike a zoning or building permit cited in *Pure Oil Div. v. City of Columbia*, 254 S.C. 28, 173 S.E.2d 140 (1970), is not a contract or a property right. The "vested right" at issue in *Pure Oil* was intended to protect land owners from changes in land use laws. *See* S.C. Code Ann. §§ 6-29-1520(10), -1530 (Supp. 2014). A beer-and-wine permit, on the other hand, is a privilege "issued or granted in the exercise of the police power of the state to do what otherwise would be unlawful to do . . . ." *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, - - , 26 S.E.2d 22, 25 (1943). Nevertheless, even if Petitioner has a property right in a beer-and-wine permit, such a right would not vest unless and until Petitioner satisfied the legal requirements entitling an applicant to that permit. This Court has found that Petitioner has failed to meet the qualifications for a beer and wine permit, because its Store has had an increasingly adverse effect on the community and has increasingly imposed an undue burden on law enforcement. The Court is unable to address the vague charge of "applying an arbitrary and capricious standard not in accordance to the well established South Carolina law regarding

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the Court to take judicial notice, nor were the details of its operation provided. Therefore, this Court does not consider the permitting of that store to be fit for comparison.

[4] Petitioner also charges the Court with "penaliz[ing] the Petitioner for taking . . . steps to improve his business." Petitioner correctly point out that the Court cited these steps. However, the Court did factor these steps into its decision. Petitioner's "[a]ddressing an incident where a minor was sold beer," was hardly a step to improve the business, as Petitioner did nothing about the incident, which militated against renewing Petitioner's license. As to the other steps, the Court concluded that despite these steps, Petitioner continued to have problems with loitering and panhandling, and had an increase in calls to the Store since the last renewal. These factors, together with the inordinate quantities of single cans of beers being sold inside the Store, which law enforcement testified promotes panhandling, led the Court to determine that Petitioner failed to "improve his business."

license renewal" without citation to specific examples from the Court's opinion as to how it was arbitrary and capricious. The Court must therefore rest with its Opinion as written and amended.

Violation of Petitioner's Constitutional Rights

Petitioner first argues that its constitutional rights were violated because it did not have notice that "the Court was going to treat his renewal case as a case for a first-time application. Petitioner did not have an adequate opportunity to prepare evidence to rebut the opinion testimony presented at the trial." First, it is unclear as to which constitutional rights Petitioner is referring (though Petitioner does later refer to its due process rights and that appears to be what it implicated by Petitioner's argument), but from an evidentiary standpoint, both permit renewal and new permit application cases essentially require a demonstration of suitability of the location. The only difference is that in permit renewal cases, the standard is whether the location is less suitable than it was when the permit was last issued. As explained above, the Court followed this latter standard in its Decision as written and amended, and therefore finds no violation of any constitutional rights. As to the claim of being unprepared to rebut the "opinion testimony" at trial, Petitioner was aware of the witnesses who would be called. In fact, Petitioner had copies of the protests that the witnesses had filed and also had the right to discovery. Therefore, Petitioner should have been prepared for the content of their testimonies. Indeed, Petitioner's hearing attorney, Mr. Allen, appeared well-prepared and thorough in his cross-examinations of these witnesses and even called one of his witnesses in rebuttal. At any rate, Petitioner voiced no concerns at the hearing about unfair surprise regarding the content of any of the witnesses' testimonies and thus cannot do so for the first time in a motion to reconsider. *See Johnson v. Sonoco Products Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). Therefore, I find this argument to be without merit.

Petitioner next argues that the Court's Order "singles out and discriminates against the Petitioner's business" in violation of its due process rights and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and under the South Carolina Constitution. Petitioner contends that the Court's denial of its permit deprived Petitioner of a substantial right because there are at least two similarly situated businesses located near Petitioner that have beer and wine permits that will continue to be allowed to sell beer and wine. Petitioner is also informed and believes that there is a third similarly situated business, located

adjacent to the Store, which was granted an off-premises beer-and-wine permit within the past six months to a year.

First, as denial of the renewal of Petitioner's permit was a possibility, Petitioner should have a raised his due process and equal protection arguments at the hearing but did not. Indeed, Petitioner did not ask the Court to take judicial notice of any prior opinions granting the issuance of beer and wine permits to these three referenced stores, nor did Petitioner introduce evidence establishing the conditions under which these stores were permitted, including how their businesses were operated. Thus, Petitioner failed at the hearing to demonstrate how the issuance of permits to these other businesses were factually comparable to the renewal at issue in this case. Therefore, Petitioner cannot raise this equal protection argument for the first time in its motion to reconsider. *See Johnson, supra.*

Second, Petitioner cites to a number of cases in support of its argument that its constitutional rights were violated. However, Petitioner provides no discussion or indication as to how these authorities apply to the facts of this case. This is also true of Petitioner's citation to *Pure Oil* in its "Vested Interest" discussion, *supra*. This approach is insufficient in an appellate brief to preserve an issue on appeal and is equally as ineffective in a motion for reconsideration. *See State v. Hill*, 394 S.C. 280, 297, 715 S.E.2d 368, 377 (Ct. App. 2011) (considering a citation to a case "without any analysis whatsoever as to how or why [it] applies" insufficient to preserve an issue on appeal, and thus rendering that issue abandoned on appeal).[5]

Stay Pending Appeal or Supersedeas

In the alternative, Petitioner moves the Court to either issue a stay pending appeal or to grant supersedeas in this matter pursuant to Rule 241, SCACR. First, as to the stay pending appeal, ALC Rule 29(E) states, "At any time prior to the filing of a petition for judicial review, and upon the motion of any party, with notice to all parties, the administrative law judge may stay the final order upon appropriate terms." The statutory authority for this Court issuing a stay is found at S.C. Code Ann. § 1-23-380(A)(2) (Supp. 2014), which provides, "The agency may grant, or reviewing court may order, a stay upon appropriate terms, upon the filing of a petition

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[5] Moreover, to the extent that Petitioner alleges a substantive due process violation, even had this argument been raised at the hearing and been properly analyzed in Petitioner's Motion, Petitioner would have been required to "show that [it] was arbitrarily and capriciously deprived of a **cognizable property interest rooted in state law.**" *Worsley Cos., Inc. v. Town of Mt. Pleasant*, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000) (citing *Scott v. Greenville Cnty.*, 716 F.2d 1409 (4th Cir. 1983)) (emphasis added). However, as discussed *supra*, Petitioner had no property interest **in the renewal** of its beer and wine permit.

under Rule 65 of the South Carolina Rules of Civil Procedure." In order to meet the requirements of Rule 65, SCRCP, a party must demonstrate that "(1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009). Petitioner fails to establish these elements.

The only element Petitioner addresses is the requirement of irreparable harm. Petitioner attaches the Affidavit of Vinoo Sehgal, wherein Mr. Sehgal avers, "If the Order remains in effect during the pendency of this appeal, then the undersigned [Sehgal] will have no choice but to close this business." However, Mr. Sehgal admitted at trial that he has no ownership interest in Petitioner; he is merely a store manager. In general, the authority to dissolve a corporation is vested in its board of directors and shareholders. S.C. Code Ann. § 33-14-102 (2006). Mr. Sehgal, therefore, is not competent to testify to the effect of denying a request for a stay on Petitioner's business.

Furthermore, at trial, Mr. Sehgal testified that he was not sure of the percentage of Petitioner's business attributable to the sale of beer and wine but that he thought it was around 40%. Though this is a significant portion of Petitioner's business, it is not irreparable to the business. Petitioner's counsel even reminded a witness that the issue in this case was the removal of the beer and wine permit, not whether Petitioner ceases doing business. And to support this statement, counsel then pointed out that the litter that the witness had collected had a lot of chips, Slim Jims, energy drinks, and a lot of other things, not just some beer cans. Aside from irreparable harm, Petitioner fails to address the other two elements.

Moreover, the Court denied renewal of the beer and wine permit at Petitioner's Store because it has concluded that Petitioner's Store has become less suitable since its last renewal due to being a constant and increased burden on law enforcement and becoming a detriment to the surrounding community. Therefore, for these very reasons, which are elaborated on in the Amended Order, the Court will not stay its Order. Therefore, Petitioner's Motion for a Stay is denied.

As to the Motion for Supersedeas, Rule 241(c)(1), SCACR permits an administrative tribunal to issue "an order imposing a supersedeas of matters decided in the order . . . on appeal **after service of the notice of appeal.**" (emphasis added). Because Petitioner has not served this

Court with a notice of appeal, the Court cannot yet entertain Petitioner's Motion for Supersedeas and must therefore deny it as unripe for review.[6]

ORDER

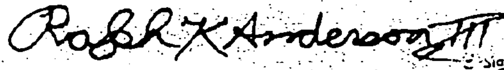
IT IS THEREFORE ORDERED that Petitioner's Motion for Reconsideration is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED that Petitioner's Motion for a Stay is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's Motion for Supersedeas is **DENIED**.

IT IS FURTHER ORDERED that all additional legal conclusions in this Order are incorporated into the Amended Final Order and Decision as conclusions of law.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

March 19, 2015
Columbia, South Carolina

[6] Even had Petitioner filed a notice of appeal, Petitioner failed to address the grounds for obtaining supersedeas – "whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." *See* Rule 241(c)(2), SCACR.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

March 19, 2015
Columbia, South Carolina

RECEIVED
MAR 23 2015
MOORE TAYLOR
LAW FIRM, P.A.