

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Walgreen Company)
Applicant (Packaged Goods))
d/b/a Walgreens)
for the premises located at)
2 East Roosevelt Road) Case No. 10 LA 36
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

Applicant Walgreen Company filed with the Commission a timely Notice of Appeal from the decision of the Local Liquor Control Commission denying its application for a Packaged Goods liquor license at its store at 2 East Roosevelt. The original denial letter of June 24, 2010, was based on a law enforcement basis for denial. That letter was amended on July 27, 2010, to include a separate deleterious impact basis for denial.

The law enforcement basis relied on the fact that from January 1, 2010 through May 23, 2010, there were 443 calls for service made to the Chicago Police Department pertaining to 1150-1199 S. State and 01-20 E. Roosevelt. These calls for service included, but were not limited to disturbances, robberies, batteries, assaults and narcotic incidents. Of the 64 total police reports generated, 33% were narcotics related and 23% were violent in nature. Of the 119 total arrests, 29% involved narcotics and/or alcohol, and 2 were offenses involving violent in

nature. In addition, the area is made up of a population of several thousand college students less than 21 years of age.

The deleterious impact denial included, but was not limited to, concerns that the issuance of the license would increase the risk of violations of law or a risk of substantial increase in noise, litter or vehicular congestion. This area contains a large number of transient individuals that currently cause law enforcement problems for the Chicago Police Department. Some of these individuals are intoxicated on a daily basis and currently cause disturbances. The issuance of this license would exacerbate the problem of intoxicated individuals in and around the area, and represent an increased threat to the safety and welfare of the residents and visitors.

Within the applicable time period the applicant submitted a Plan of Operation per Section 4-60-040 of the Municipal Code of Chicago that it felt provided reasonable assurance that the issuance of this liquor license, at this location, will not have a deleterious impact on the surrounding community. After reviewing the Plan of Operation, the Local Liquor Control Commissioner felt the proposed Plan of Operation did not meet that burden.

With respect to the denial based on the deleterious impact basis this Commission must make a two-prong determination. If the initial decision is that the City has not met its burden of proof on the initial issue of whether the issuance of the license would cause a deleterious impact, the case is over and the City can appeal the decision. If the initial decision is that the City has proved that the issuance of this license would cause a deleterious impact, a subsequent decision needs to be made as to whether the applicant has proved that the issuance of this license pursuant

to the terms of the proposed plan of operation would not result in a deleterious impact on the surrounding community.

A synopsis of the evidence in the record will assist in understanding the reasons for this decision.

There were a number of witnesses from the community who testified in opposition to the issuance of this license. Those who testified as secondary witnesses and just stated their opposition included Richard Weindorfer, a member of the 801 Plymouth Court condo board and the South Loop Neighbors, and an area resident since 1993, and Deborah Jo Soehlig, the immediate past president of the Greater South Loop Association. Their concerns centered on the people coming and going in a transient area that are panhandling and loitering.

Robert Koverman is Associate Vice-President of Campus Security for Columbia College. Columbia College has 26 buildings in the South Loop. He is responsible for the protection of safety and security of people, property, and assets for Columbia College in the South Loop. His background in law enforcement includes ten years as a police officer in Dayton, Ohio. He is opposed to the issuance of this license individually and on behalf of Columbia College. He has spoken to security at other colleges in the area and they are joining him in opposition to this license. His concern is based on the fact there are 60,000 students attending higher educational institutions in the South Loop with probably 6,000 students between the ages of 18 to 64 living in the area in dorms or private residences. His objection is based on the increased alcoholism abuse in college aged students and the injuries and assaults that have been reported as related to

alcoholism. There are enough permit holders in the South Loop. He is also concerned about security at Walgreens with respect to where the liquor would be housed. He did admit he had no knowledge of Walgreens' Plan of Operation pursuant to which liquor would be sold at this location. He was in this store once to shop and did not see a security officer. He did not testify against the issuance of a liquor license to Trader Joe's in the South Loop and does not know what type of security Trader Joe's has at the South Loop store.

Deborah Halfon is an Associate Dean and Associate Professor at DePaul University. She has lived across the street from the Walgreens location for seven years and has lived in the general area for sixteen years. She opposes the issuance of this license because of the little children traveling to and from school in that area. She also feels that corner is congested with residents and by people with no pride in the area. People relieve themselves a few steps from Walgreens and it is a spot for crime with increased theft, robbery and assaults. The Jewel and Trade Joe's supply the community very well. She posted a flyer in her condo area and received 17 responses from residents opposed. Dr. Halfon never spoke to anyone at Walgreens with respect to their proposed security protocols or how Walgreens would limit how it would sell alcohol. She admitted she had no knowledge about what Walgreens would do. She affirmed there is enough liquor and is opposed to this corner. It is a heavily trafficked corner and a major thoroughfare. There is crime in that corner and her objection is site specific to this location.

Clementine Gutowski has lived at 1143 S. Plymouth Court for 17 years and is familiar with this Walgreens location which is a block from her home. She opposes the issuance of this license because it is one of the most congested intersections in Chicago. It has crowds from

Bears games and the museum campus, and there are a lot of people around and some are unpleasant and rowdy. There is also congestion with students from the South Loop School. This area has a number of panhandlers and a number of homeless people. There are intoxicated persons at the location. There is no need for another license since Jewel has a full liquor service. Ms. Gutowski never spoke to anyone from Walgreens about how they would sell liquor or what security protocols they would maintain for security. She had no knowledge of the proposed plan of operation which would have restricted the hours of operation and types of product Walgreens would sell at this location.

Tom Kubiak is the Pastor of the South Loop Community Church at 1347 S. State which is two blocks from this Walgreens location. He is opposed to this license because of the problems of security, vandalism, theft, and homeless people in the area. There is liquor already accessible at Jewel. He admitted he had not discussed with anyone from Walgreens what or how it proposed to sell liquor at that location including its proposed security policies. He did not object to Trader Joe's obtaining a packaged goods license recently and he does not know what security is in place at Trader Joe's. The proximity of his church to Walgreens is the fundamental reason he was at the hearing.

Sophia Carey has been a Business Consultant/Supervisor for the Department of Business Affairs and Consumer Protection for five years. She works with the business consultants on various license applications. The Department denied the packaged goods license application for this Walgreens at 2 East Roosevelt. It was denied for law enforcement concerns and deleterious impact. A plan of operation proposed by Walgreens was rejected as being insufficient to address

the issues presented by the Alderman, the police commander, and the local community. She identified City's Exhibit 2(a), as the letter sent denying the plan of operation. On cross, Mrs. Carey stated she was not the author of City's Exhibit 2(a), but acknowledged the issue of an armed security officer was the main point of the denial. She could not testify that the license would have issued if Walgreens had agreed to uniformed security.

Robert Fioretti is the Alderman of the 2nd Ward of the city of Chicago. It includes the area where the Walgreens is located at 2 East Roosevelt. He is opposed to the issuance of this packaged goods license at this location. His opposition is based in part on the fact that the premises are a little run down with banners 14 or 15 years old. There is a lot of in and out traffic by the L at various times. There are people using the area underneath the L for a restroom, urinating and defecating. He has spoken with the police commander about a number of incidents in and around this location. The Commander submitted a request in terms of operation. For whatever reason the element that they do not want in our community has gravitated at that location. He feels the issuance of a liquor license at this Walgreens would have a negative impact on the health, safety, and welfare of the surrounding community.

The Alderman agreed that Walgreens had submitted a plan of operation to govern how alcohol would be sold at this location. He acknowledged that the parties had agreed that the plan of operation proposed was acceptable except for the significant disagreement over the Commander's request for uniformed and potentially armed security presence. Walgreens felt in store, in house employees, could address the issues raised by the Commander. The Alderman

agreed he would have withdrawn his objection if Walgreens had agreed with the Commander and placed uniformed security at the store.

Christopher Kennedy has been the 1st District Commander for three years and has been a police officer for approximately twenty years. The applicant location is in the 1st District. He described the area around 2 East Roosevelt as a congested area that draws 60,000 college students per day, and is one of the main public transportation hubs with bus routes and transfer centers at Roosevelt and State. It is a challenging area in that it is robbery target spot for the district and a focal point for quality of life issues. By that he means panhandlers, public drinking and urination. These are things that affect the constituents and individuals who work and live in the downtown area. He believes issuing this packaged goods license to Walgreens at this location would cause negative impact in the community. This opinion is based on his 20 years of law enforcement experience that when you allow alcohol in a problematic area it will exacerbate the issue.

The Commander identified City's Exhibit 3, in evidence, as a letter he wrote on May 25, 2010, to Local Liquor Control Commissioner Greg Steadman opposing the license. It listed law enforcement data from January 1, 2010 through May of 2010. There were 443 calls for service including quality of life issues, robberies, assaults and narcotic related incidents, of the 64 crimes for which police reports were generated, 33% were narcotic related and 23% were violent in nature. There were 119 arrests and 29% of those were narcotic or alcohol related.

The Commander did a computer run the day of his testimony to update statistics. Within a 1/8 of a mile radius of 2 East Roosevelt from January 1, 2011 through September 28, 2011, there were 443 repeated crimes; 101 were “part-one crime” which would be traffic, robbery, burglary, and thefts of motor vehicles. A significant portion occurred on or adjacent to the CTA property. He explained that this location is in a robbery target area which he defined as an area from Roosevelt to Lake from Michigan to Wabash that showed a significant increase in robberies. The Commander’s opinion was based not only in the report statistics but also his personal observation of these quality of life issues.

The Commander does not object to the issuance of liquor licenses per se, but objects to this particular license at this location. It would cause an increase in crime and have a negative impact on the community and cause a law enforcement problem. The Commander discussed these concerns with a Walgreens representative and he requested Walgreens have a uniformed armed security guard present. The Commander felt such a uniformed presence is a significant deterrent for shoplifters and for things taking place in close proximity to the business.

The Commander reviewed Applicant’s Exhibit 1, which was Walgreens proposed Plan of Operation to abate any deleterious impact. He agreed with each of the proposals listed in this Plan of Operation except that Walgreens did not agree to his request to have an outside security firm to install uniformed guards. Walgreens felt such security could be a deterrent to people shopping at the store; that it would scare people away.

The Commander agreed that his letter to Greg Steadman on May 25, 2010, listed two bases for his objection to the license. Those were the calls for service and police reports and arrests, and the second basis for the close proximity of the college students under 21 years of age. The witness acknowledged calls for service and/or generation of police reports is not synonymous with actual arrests or convictions of the commission of a crime. Not every call for service results in a report being generated. A police report is generated when there is an allegation a crime has occurred or the police officer observed a crime. Police officers may respond to service calls clearly with something of a criminal nature that will be adjudicated without a police report and is just a service call.

The Commander agreed there are a number of packaged goods license in the area of 2 East Roosevelt. This includes a Jewel/Osco, Target, and a Trader Joe's. He does not believe these licenses are operating under a plan of operation.

The witness added that the calls for service in this area represent a drain on the police department without liquor at this location. His opinion is that liquor at this address will exacerbate these issues. He added his request on a phone call the day before he testified in this hearing for the security guards to be present for a short period of three to six months. His experience is that this would lay a strong foundation with regard to criminal activity.

Donovan Pepper has been the Manager of Government Relations for Walgreens for a little over six years. He acts as the liaison for Walgreens with local municipal and state

governments. About three years ago, Walgreens embarked on a plan to reintroduce alcohol sales in their stores. This decision was in response to the customers demand.

They have 260 to 280 stores re-licensed in the State of Illinois with 68 to 70 being in Chicago. As an aggregate, liquor sales account for about 4% of sales in Chicago. This would probably be the same of 2 East Roosevelt since it is a smaller store. Walgreens generally allots about two cooler doors for beer and a nine foot section for wine. Beer is sold by six packs, twelve packs or by the case and no fortified wine, malt liquor or 40 ounce single-serve products are carried. Those products do not appeal to the clientele that Walgreens wants and he doubts customers looking for those products would come to Walgreens.

When he became aware there was potential opposition from the Alderman and the Police Commander, he met with the Alderman. This was about two and a half to three years ago. He gave Alderman Fioretti a list of the Walgreens in the 2nd Ward and asked if he had any objections. There was no concern about this location and they filed the application for this license. When the present Aldermanic and police objections arose he attempted to meet with them. There was a meeting with the Alderman, the Commander, the City attorney and Walgreens' attorney at City Hall. Suggestions were made to address concerns and those suggestions were included on Walgreens' Amended Plan of Operation which is Applicant's Exhibit A. This was the last proposed plan sent to the City to try to resolve concerns. This plan was rejected by the Local Liquor Control Commissioner because Walgreens did not agree to hire an outside security firm. Walgreens made an alternative proposal to use internal Walgreens employees known as greeters to address concerns inside and outside the store. Walgreens

resisted this request since this store was performing well in terms of shrinkage. Since it is a small store it was not warranted. Walgreens was also concerned that having an armed guard might make people think it was not a safe store.

Mr. Pepper testified in detail about Walgreens' participation in community activities in the 2nd Ward. They are involved with the Ada McKinley Center, a social service center, they have a partnership with Jones Commercial High School and the Chicago Public School System, and with the Pacific Garden Mission and the institutions of higher learning including Roosevelt, Loyola, Columbia and UIC.

Pepper also testified he is familiar with the Trader Joe's which is about a quarter block away from this Walgreens. The size and scope of its liquor selection is significantly larger than that proposed by Walgreens. It carries wine for sale at a price as low as \$2.69.

Jeff Knies has been a District Loss Prevention Manager for Walgreens for approximately twelve years. He is responsible for internal and external loss prevention issues in his district, as well as, exterior crime dealing with store security aspects. This Walgreens is one that is in his district. He visits the store once a month. Walgreens maintains an external database that documents criminal events like shoplifting or theft. If it is an external issue involving a robbery, a burglary, or an injury it is put into the system. In the three and a half years he has been responsible for this store there have been no external events noted and five internal events dealing with Walgreens' employees. He is not aware of any regular or chronic problems associated with panhandling or any of those quality of life issues occurring regularly at or near

Walgreens. If such conditions existed and they get to the point it's an ongoing or a safety issue he would be notified.

Knies described a store greeter as an in-house security for Walgreens. They dress in street clothes usually so they can roam the store. Their duties, with respect to the exterior of the store, are to ensure people are not loitering or hanging around clogging up the entrances and exits of the store. If they believe the police should be called because of some type of criminal activity they would call the police. They are deterrents to criminal activity by their responsibility in front of the door.

Knies makes the decision on when outside security is called at 2 East Roosevelt. It is done for the 4th of July, Bear's playoff games, or a big concert at Soldier Field or in the area. He would make that decision with the store manager. In his experience, the use of an in-store greeter at this location has been sufficient to maintain an orderly environment within the store and on the public right of way outside adjacent to the store. Not many of the 43 Walgreens in his district, the Chicago Loop, use outside security and that security was in place when he started in the district. He has not recommended outside security at any of the stores.

Megan Kitching is a District Loss Prevention Manager for the 43 Walgreens stores in the Chicago Loop. She shares those responsibilities with Jeff Knies. She is at this location every 90 days. With respect to crime related issues this store has low incidents of crime. If there is an interior situation at a Walgreens, she or Jeff would be contacted. They would also be notified if external police were called in and an external incident alert would be entered into their database.

She has never had an occasion to issue an alert for criminal activity at or near the applicant location.

She described a “store greeter” as an individual who is tasked to reduce external shrink by having eyes on the floor, in addition to, store surveillance. External shrink means a theft or robbery by someone not an employee of Walgreens. Internal shrink would involve an employee. The greeter typically does not worry about what is happening outside the store. He would be at the store entrance but not on the sidewalk or the public way. Certain external happenings like an athletics event or a rally could result in using additional security. The witness previously worked as an investigator for the Drug Enforcement Administration of the Justice Department and she attended Quantico for six months. She does not feel there are any law enforcement issues at the applicant address that have not been addressed. She is not aware of problems with loitering and vagrancy, and robberies in the area.

Reshuna Berry has been the store manager at the Walgreens at 2 East Roosevelt for six years and she has worked for Walgreens for twenty-two years. Walgreens has policies as to how and under what circumstances criminal activity should be reported to the police or up the corporate chain of command. If there is any unsafe incident the police are called. Shoplifting is reported to the police and corporate. There are security monitors in place as anti-theft devices. The store has never been cited for any health violations. The store is well lit and no banners for the exterior have been ordered. She patrols the outside of the store regularly, about eight to ten times a day, to pick up trash left behind by panhandlers or pedestrian traffic from CTA. She has requested people panhandling or loitering in the area move away and there has not been an

instance where the request was refused. She called the police on a shoplifter a week and a half ago. The store greeter for the last six months has been Diante. His responsibilities outside the store would be to make sure there is no loitering or panhandlers and to pick up any trash. He also would check that lights are working. She goes to the business CAPS meetings which are held every two months. No one has complained about Walgreens or their concern with people panhandling, drinking on the public way, urinating on the public way and littering. No beat officer has ever complained about deficiencies in the manner Walgreens runs this business and no beat officer has indicated Walgreens' operations had led to an increase in panhandling, loitering or any other quality of life issue. There is a policy at Walgreens to call the police if there is shoplifting and/or other crime observed. She did call to report a shoplifting about a week and a half ago and she makes about two calls a week. She has not seen any other crime other than shoplifting. She has had to call the police about the panhandling and loitering one time because they usually move down. The greeter, Diante, works the evening shift since he is not needed during the day when she or her executive assistant is present.

There are two grounds alleged for the denial of this license. They do overlap because one basis is a law enforcement denial and the second basis is deleterious impact based on law enforcement concerns. They will be addressed separately.

With respect to the original denial letter of June 24, 2010, the denial was based on the Section of 4-60-40 which allows "the local liquor control commissioner may deny an application for a city liquor dealer's license if the issuance would tend to create a law enforcement problem."

The case of Vino Fino Liquors v. The License Appeal Commission, No. 1-07-3269, issued on September 1, 2009, gave a definition of the term “tend to create a law enforcement problem.” In doing so, the Appellate Court stated the ordinance did not define that term and that the Court had not found any prior judicial decisions discussing the phrase. The definition from the Appellate Court was that:

To deny a license to an applicant who would “tend to create a law enforcement problem is to deny a license to an applicant who would not obey liquor control laws and the law generally or would impede enforcement of those laws.”

Since the applicant in Vino Fino had a past history of sales to minor, which is a violation directly related to the control of liquor, and is a Class A misdemeanor under state law there was sufficient evidence to deny that license on the grounds it would “tend to create a law enforcement problem.”

This Commissioner acknowledges that the application of the definition in Vino Fino to Walgreens would lead to a finding that the issuance of this license, to this applicant, at this location, would not tend to create a law enforcement problem. There is no evidence in the record that Walgreens has a history of violating the liquor control laws and the law generally or who would impede enforcement of those laws. This Commissioner does not feel the Vino Fino definition applies to all cases in which there is a law enforcement denial. If the evidence in a denial is similar to the evidence presented in Vino Fino, the definition in Vino Fino would apply. If the evidence presented in support of a denial based on law enforcement is broader and focused on the effect of liquor sales in the immediate community, the Vino Fino definition would not apply.

The evidence in this case is that the area around Walgreens is an area that is congested due to its being a transportation hub and with its having 60,000 college students in close proximity. The area is presently a focal point of quality of life from other witnesses. The record contains sufficient evidence to affirm the decision of the Local Liquor Control Commissioner that the issuance of the packaged goods license would tend to create law enforcement by exacerbating the quality of life problems currently existing in the area around Walgreens.

The second basis for denial set out in the amended denial letter of July 27, 2010, was that the issuance of this license would:

Have a deleterious impact on the health, safety, and welfare of the community in which the licensed premises is located. "Deleterious Impact" means an adverse effect on the value of property, an increased risk of violations of the law, or a risk of a substantial increase in noise, litter and congestion.

The amended denial letter references the area has a number of transient individuals that currently cause law enforcement problems for the Chicago Police Department. Some of the individuals are intoxicated on a daily basis and cause disturbances. The issuance of this license would exacerbate the problem of intoxicated individuals in and around the area and represent a threat to the life, safety and welfare of the residents and visitors.

Walgreens presented a plan of operation to the Local Liquor Control Commission pursuant to the Municipal Code. The Local found that this plan did not provide reasonable assurance that the issuance of this license will not have a deleterious impact on the health, safety, and welfare of the community. The burden is on the business owner. Since this Commissioner

has found the issuance of this license will cause a deleterious impact on the community, the issue of the plan of operation must be addressed.

While the plan of operation in evidence set out 13 proposals, the only matter in dispute deals with its proposal 6. Walgreens proposed employing in-house greeters to be stationed at the premises entrance during business hours and other personnel of a sufficient number to deter theft, loitering, and other unlawful acts in and around the licensed premises. Licensee shall deny entry to any person who is visibly intoxicated and notify local police of all unlawful acts witnessed by, or reported to, any of its employees, including instances of public intoxication, loitering or other public disturbances. The Police Commander and the Alderman wanted Walgreens to hire outside security guards for a period of three to six months. That would lay a good foundation with regard to criminal activity. Walgreens felt the greeters could do the same job and also felt the presence of security guards could cause customers to feel Walgreens was not a safe place to shop.

The burden of proof was on Walgreens to establish that in-store greeters would be sufficient to abate any nuisance. There is testimony in the record from the store manager that she and the present greeter shag away the loiterers from the area around Walgreens, but it seems that they return. The applicant has failed to meet its burden that the use of in-store greeters as opposed to uniformed security guards for three to six months would be sufficient to prove the establishment would not negatively affect the community.

If this Commission had the authority to order the license to issue with uniformed security guards for six months and with the all the proposals in the plan of operation in effect, it would do so. This Commissioner does not believe the Commission has that authority.

A final point to be addressed is the licensee's position that it was treated differently from other establishments with packaged goods licenses, especially Trader Joe's. That is not an issue that is before this Commission and this Commission cannot speculate on why Trader Joe's received a license. This is mentioned to place it of record in this decision.

The denial of the packaged goods license for Walgreens at 2 East Roosevelt is affirmed.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local
Liquor Control Commissioner of the City of Chicago be and the same hereby is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: May 4, 2012

Dennis M. Fleming
Chairman

Donald O'Connell
Member