

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

GHW, Inc.)
d/b/a Skybox Sports Bar)
Applicant (Tavern))
for the premises located at)
3601 West Harrison) Case No. 10 LA 30
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Gregory Steadman, Commissioner)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O’CONNELL

On June 11, 2010, the Local Liquor Control Commissioner issued a Final Denial Letter denying the applicant’s request for the issuance of a tavern license at 3601 W. Harrison. While the final denial letter references a previous denial letter based primarily due to law enforcement and deleterious impact bases this final denial was solely based on the position that the issuance of this tavern license would tend to create a law enforcement problem. The applicant filed a timely Notice of Appeal and this matter proceeded to a de novo hearing before this Commission. The applicant was represented by attorney Roderick Sawyer and the City of Chicago was represented by Daniel Rubinow and Jamie Zehr.

The City presented the testimony of 11th District Police Commander Penelope Trahanas. She has been a Chicago Police Officer for 24 years and has been Commander of the 11th District since August of 2009.

In her position as 11th District Commander she received a request for comment on this application for a liquor license at this location. In response to this request she wrote a letter in objection to the issuance of this license. She identified City's Exhibit 1, as that letter she wrote in opposition.

The witness described the 11th District as originally the most violent district in the city. It is number one in homicides. The 3601 West Harrison location is in the immediate are of a known gang conflict area. That is an area established by an analysis group to identify certain areas within the city where there is a high amount of crime and a high propensity for violence.

The witness detailed several reasons for her opposition to the license. The first is that the area has a high number of parolees living in the area. Two gangs are continuously involved and outside manpower requests are continuously made to cover the area. One block east of the applicant's location is a liquor store that has issues with people loitering and hanging out. She believes a liquor license one block away would only add to the issues already in the area. There has not been violence immediately connected to the liquor store, but the loitering, drug dealing and prostitution are already issues. Her concern is that a tavern one block away will exacerbate that issue. The issuance of this license would deplete the limited manpower. The 11th District is already short on manpower. Closing time is when traditionally the time for shootings and fights. As part of her response, she ran statistics that showed in the last quarter of 2009 in that area there were 27 arrests for narcotics, 13 arrests for soliciting, 2 arrests for unlawful use

of weapon, 1 arrest for criminal damage, and one arrest for gambling. The statistics also showed an additional 59 calls for service which included shots fired, robberies and other disturbance calls.

Commander Trahanas opined there was an additional law enforcement problem with this application because the original application was for a sports bar and grill which was a misrepresentation and would have had an unsecured area of access. She is uncertain if this issue has been remedied.

The Commander testified to a meeting with three community residents who were concerned with a license issuing because there had been several nights where shots were fired from the rooftop which concerned them this would be a gang hangout. The Alderman also expressed concerns about the attraction this location would become for gang members.

On cross, Commander Trahanas described the applicant's location as mostly industrial with the only business open after 5 o'clock being the liquor store. She does not believe the reason for the arrests in the area was that the area was abandoned and did not believe criminals would find it easier to commit crimes in abandoned areas. She does not consider a bar, a bar licensed by the City of Chicago, to be a reliable business. A business which would attract the well-known gang element and the parolees in the area to come and drink alcohol is not a benefit to her district. She admitted a McDonald's is in the district and that gang members have been arrested at McDonald's but added

McDonald's does not serve alcohol and gang bangers do not congregate there for long periods of time. Commander Trahanas admitted she assumed the gang bangers would congregate at the applicant's location. While the Commander would not agree she is not in favor of any alcoholic places in the 11th District she could not think of one place that serves alcohol in the 11th District that she feels is a viable business. She did admit the most common call for service was for narcotics and these calls came in both high-traffic and low-traffic areas. This area is one of the volatile areas in the district. This type of business will attract the negative influences she is trying to remove. She does not believe a liquor establishment would attract others from the community and believes there are wonderful decent people in the 11th District afraid to come out because of negative influences. She did admit she did not know if neighbors would support a liquor establishment.

The Commander repeated her opinion that this establishment would have an adverse impact on the community and would increase the risk of people violating the law as well as increase noise and congestion in the area. She did not do an investigation of her own into the applicant and the officer holders of the applicant.

On re-direct, Commander Trahanas attributed loitering and violence and police action to the open liquor store one block from the applicant's location. Her opinion is that if there was no liquor store that activity would go away. That opinion was based on precedents of closing liquor stores with the results being an end to loitering in this area. If there is no license at 3601 W. Harrison there is no place for gang bangers to hang out

and less violence. She did add that there is a fast food location adjacent to 3601 W. Harrison that is open and has been open. She cannot recall the hours of operation or if it is a sit-down restaurant but she believes the people applying for this liquor license operate that restaurant. There have been no police issues at that restaurant location.

The Municipal Code of the City of Chicago allows for the denial of an application for a liquor license if its issuance would “tend to create a law enforcement problem.” The Municipal Code did not define what this term meant and until recently no case law discussed its meaning. In the case of Vino Fino Liquors, Inc. v. The License Appeal Commission of the City of Chicago, 1-07-3269 (First District – Second Division, Appellate Court of Illinois). Justice Theis reviewed the ordinance in its entirety and stated:

Examination of the broader context and scheme of this portion of the ordinance discloses that the City’s intent is to prohibit the issuance of a license to individuals and entities controlled or owned by individuals who have a prior history of disobeying liquor laws and the law in general. The ordinance requires the applicant to disclose all of the information so that the LLCC can examine the relevant individuals’ history to make this determination. The purpose of these measures is to promote the City’s goal of protecting public health and safety (See 235 ILCS 5/1-2 West 2006). Thus, 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 generally or who would impede enforcement of those laws.

Applying that definition to the facts of this case would require that this Commission reverse the decision of the LLCC. This is a de novo hearing and there must be evidence in the record that would prove the basis for denial. The evidence in this

record from Commander Trahanas does not meet the City's burden of proof that this applicant would not obey liquor control laws generally or would impede enforcement of those laws.

There remains the question of whether the Appellate Court's ruling limits denial of an application for a liquor license on the basis that the issuance of the license would tend to create a law enforcement problem to fact situations in which the City can meet its burden that the applicant would not obey liquor control laws generally or who would impede enforcement of those laws. If that is the law, denial of an application of a liquor license under this criteria would require specific evidence about the background of the applicant that would prove the applicant would not obey the law. It would prevent the City from ever using this basis to deny an application based on circumstantial evidence and opinion evidence from law enforcement officials. The City could never deny an application based on the type of evidence presented in this case. With all due respect to the Appellate Court this Commission feels that the Municipal Code does allow the City to proceed with a denial of an application on the law enforcement basis without needing to prove the applicant would tend to break the law. To require such evidence in all cases dealing with law enforcement denials would limit the City's ability to promote its goal of protecting the public health and safety.

The issue now becomes whether the testimony of Commander Trahanas was sufficient for the City to have met its burden of proof that the issuance of this license at this address to this applicant would tend to cause a law enforcement problem. It seems

logical to include within that the term the issue of whether the issuance of this license would also tend to exacerbate existing law enforcement problems. Commander Trahanas has testified about the violence and crime throughout the 11th District and has noted in her testimony the location of this premise is within a “known gang conflict area.” She has testified to problems of loitering in the area of a liquor store located about a block away and she has given her expert opinion based on 24 years of law enforcement experience that such problems will move to this location if a license issues. She also gave her opinion that the issuance of this license would adversely impact the community, increase the risk of people violating the law, increase noise and congestion and further deplete police resources.

One must review this testimony from Commander Trahanas in light of other testimony that she could not think of one reliable business that serves alcohol in the 11th District. While she denied being opposed to all alcoholic places in the 11th District that concept permeated her testimony at this hearing. There is probably a basis in fact for the concept that the issuance of any further liquor licenses in the 11th District would tend to cause law enforcement problems, but that concept is not a reason to deny a license under the Municipal Code.

Each applicant case must be scrutinized as to the particular facts of that case. If the applicant wishes to open a liquor store as opposed to a tavern that fact would be important. If the applicant did not have a history of operating a fast food restaurant around the corner from the site of this premise without any police problems, that fact

would be relevant. If the location of the applicant premises was in an area already plagued with problems with existing taverns, that would be a relevant fact. If specifics were given supporting concerns of increased noise and congestion and depletion of police patrols were given, such facts would be relevant.

Based on the record in this case and dealing only with the facts of this case in the record, the City failed to meet its burden that the issuance of this tavern license at this location to this applicant would tend to cause a law enforcement problem.

The decision of the Local Liquor Control Commission is reversed.

COMMISSIONER SCHNORF'S CONCURRING OPINION

I concur with the decision that the denial of this application is reversed and find that the Vino Fino case controls this case.

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 REVERSED.

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: February 8, 2011

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member

Donald O'Connell
Member