

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

3660 Clark Street, Inc.)
Kevin Killerman, President)
Applicant (Outdoor Patio - Rooftop))
for the premises located at) Case No. 05 LA 53
3660-62 North Clark Street)
)
vs.)
)
Local Liquor Control Commission)
Department of Business Affairs & Licensing)
Scott V. Bruner, Director)
)
)

ORDER

COMMISSIONER KOPPEL'S OPINION

This matter comes before the License Appeal Commission on an appeal to deny the applicant an incidental license to use an outdoor rooftop area. This area would be used in the summer. This licensee has a liquor license with an incidental to serve food. The issue in this matter is as follows - this restaurant bar is across the street from Wrigley Field. The charging document states that the residents around the area do not want anymore liquor licenses. The City alleges that the issuance of the license would cause a deleterious impact upon the community. This is a restaurant and the rooftop portion would increase the capacity to 80 people.

This licensee is a credible businessman. He owns other types of restaurants in the city and is in good standing and is responsible. It should be noted that the police approved the additional license.

The testimony of the City's witnesses, some living blocks away, testified that the addition would make the neighborhood worse. They were concerned that more traffic and people in the area would cause a negative impact.

It is clear from the evidence that the City did not prove its case. The applicant is properly zoned. None of the residents within 250 feet of the establishment complained. Certainly, the issuance of a license in a properly zoned area conforms with the character of the community as a whole. This is Wrigleyville. This area is replete with restaurants, taverns and other entertainment venues. In addition, the City recently passed an ordinance allowing additional rooftop licenses.

There is no evidence that this establishment has ever done anything wrong. There is such a thing as due process. If an establishment commits a wrongdoing they are subject to the complaint procedure in the City Code. There has been no wrongdoing by the applicant. There are remedies for bad operators. There is no indication of any bad acts that can be attributed to the applicant. Actions that take place on the street after a ball game are not the applicant's responsibility.

The applicant has done nothing wrong to deny him the license. No nuisance charges have ever been leveled against this establishment. The City is reversed.

OPINION OF COMMISSIONER ADAMS

The City denied the issuance of an additional license to allow the sale of alcohol on an upstairs outdoor patio in a licensed establishment across the street from Wrigley Field. The basis for the denial was that the additional license would have a deleterious impact on the surrounding community. The licensee appeals that denial.

The City presented a number of witnesses in opposition to the license. A consistent theme throughout the testimony was a dissatisfaction with the expansion of both the number of seats at Wrigley Field (estimated to be in excess of 1,800 new seats) and the number of night games allowed (by some estimates reaching 30 in number). The witnesses often mentioned the rowdy behavior of drunken Wrigley Field attendees and the disrespect that those attendees exhibited for the community in which the ball park is located. The witnesses were upset with the general nature of the party like atmosphere in the neighborhood during Cubs games. Additionally, they were concerned about the potential precedent that might be set if a 'rooftop patio' was allowed to be licensed, fearing an expansion boom of additional revelers. One witness warned of a 'domino effect' that such a licensing scheme would have. They did express to a lesser degree complaints about the potential for noise, specifically at the licensed establishment and some concern regarding the actions of patrons of the establishment in the past. While these witnesses were convincing in their description of the general party atmosphere

during Cubs games at Wrigley Field and the problems that over exuberant fans bring to the neighborhood, they were much less convincing in any specific complaints regarding the licensed premises.

In opposition to the City's residents, the applicant presented an array of credible witnesses. Patricia Brickhouse, the widow of Cubs announcer Jack Brickhouse testified to the positive character of the applicant's establishment. Lawyer and local resident, Michael E. Lavelle, credibly supported her contention about the positive nature of the bar and its law abiding clientele. A local real estate broker testified to property values in the area and that clearly, in his opinion, the additional license would not have a negative impact on property values. Even the local Alderman who was opposed to the license testified that while he opposed the precedent of this type of expansion, he had no complaint whatsoever with the bar as it was currently operating.

The applicant in rebuttal to the speculation of City witnesses regarding the potential of noise pollution, presented an acoustical engineer. That expert testified to sound reduction techniques employed at the applicant's establishment. He measured the noise generated at the establishment. Based on his observations, calculations and tests, he concluded that the license would not contribute to the ambient noise in the community. The City did not rebut that expert testimony.

Perhaps most convincing was the very credibly testimony of the applicant. The applicant

holds a liquor license kiddy corner from Wrigley Field, he also holds five other licenses for Chicago restaurants and taverns. The applicant has an unblemished record as a license holder and businessman. He has invested millions of dollars in the restaurant and as a result has a substantial financial investment to protect and every reason to continue to run a law abiding establishment. He was an impressive witness.

While I appreciate that problems exist in the neighborhood, those problems need to be addressed by the ball park, police department and a vigilant Liquor Commission that targets bad operators. The applicant is not one of those. The City failed to prove that the issuance of this license to this operator would have a deleterious impact, we reverse the denial.

OPINION OF CHAIRMAN CALABRESE IN DISSENT

I agree with my colleagues that the applicant is of exemplary character. His record as a license holder in the community is commendable. But I concur with the opinion expressed by Alderman Tunney, the problem is not this operator it is rather Wrigleyville.

The Wrigleyville area is overrun with liquor establishments. One witness suggested that there were 39 licenses in the immediate area of Wrigley Field. The problems of noise, congestion, litter, public fighting and public intoxication overwhelm the community. The lure of the party atmosphere at Wrigley Field, an expanded capacity and more night games pose a spiraling problem for government and the community.

Real problems already exist. The licensee is requesting an additional license to populate

a rooftop patio. To grant that license would set a precedent that would have the potential consequence of raising the capacity for other locations. That increase in capacity would potentially mean more revelers spending more time and imbibing more alcohol in Wrigleyville eventually to be released at closing time into an already suffering community. As one of the City witnesses testified 'enough is enough'. The only responsible action that the Local Liquor Control Commission could take given the current atmosphere at Wrigley Field was to deny what amounts to an expansion of the license. I would have affirmed the denial.

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: April 10, 2007

Irving J. Koppel
Commissioner

Don W. Adams
Commissioner

Anthony J. Calabrese
Chairman – IN DISSENT