

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Broadway Tavern, Inc.	)	
d/b/a Broadway Tavern	)	
Applicant (Tavern)	)	
for the premises located at	)	
4001 North Broadway Avenue	)	Case No. 13 LA 6 &
	)	13 LA 27
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

Broadway Tavern, Inc. applied for a Tavern license for the premises located at 4001 North Broadway Avenue. The initial basis for denial was that the premises was located within 100 feet of Thorek Memorial Hospital in violation of Chicago Municipal Code 4-60-020 and Section 5/6-11 of the Illinois Liquor Control Act. This denial was appealed on case 13 LA 6.

Subsequent to that appeal, the Local Liquor Control Commissioner on April 29, 2013, issued an Amended Denial Letter adding as another basis of denial that the issuance of this tavern license would have a deleterious impact on the health, safety and welfare of the surrounding community. The issues raised included parking problems, safety concerns for pedestrians, noise, public intoxication, and unruly behavior for patrons of the establishment. That letter advised the applicant it had twenty days to file a plan of operation that would provide reasonable assurance that the issuance of the liquor license will not have a deleterious impact on

the surrounding community. This amended denial letter repeated the original basis for the denial. This denial was appealed in case 13 LA 27. While there is no dispute no plan of operation was filed within 20 days of April 29, 2013, there is a dispute as to whether the applicant received the amended denial in a timely manner so a plan of operation could have been filed in a timely manner.

The applicant filed a timely Notice of Appeal with this Commission. The cases were consolidated for hearing by agreement of the parties.

A synopsis of the relevant evidence will aid in understanding of this decision.

James Cappleman has been the Alderman of the 46<sup>th</sup> Ward for two years. 4001 N. Broadway is in the 46<sup>th</sup> Ward. The general area around 4001 N. Broadway includes Thorek Hospital on the northwest corner and a gas station on the southwest corner. There is a lot of small retail along Broadway and this is more of a business district. The residential area called Buena Park is nearby. He is aware that Broadway Tavern, Inc. has applied for a tavern license and he does not support this license.

The primary reason of concern is that applicant never approached him to discuss the proposal which made it impossible for the community to provide feedback to given the lack of information. The past history of other businesses the Menetti brothers operated such as the Green Dolphin in the 32<sup>nd</sup> Ward, and the Lawrence House in the 46<sup>th</sup> Ward also provided a reason to disapprove the license. It was the Alderman's understanding that the applicants on this

case were the Menetti brothers. The Alderman is familiar with the operation of the Lawrence House since it is a half-block from his home. His concern with how the Menetti's operated that location dealt with problems of no utilities and no hot water. Crime was very high and he personally saw drug transactions inside Lawrence House.

The Alderman held a community meeting at Gill Park and of the thirty people in attendance all but two were opposed to this license and those two were neutral. The concerns expressed by residents at this meeting were the family's past reputation running businesses; traffic concerns the license could contribute to, crime in the area, and the proximity to a hospital.

It is the Alderman's opinion that issuance of this tavern license would have a negative effect on the health, safety and welfare of the community.

The applicant did approach the Alderman for the first time a few weeks before the hearing. At present, there is not a community input procedure in place pending the resolution of the case.

The City then presented five secondary witnesses who testified they were opposed to the issuance of this license.

Barbara Cozzi has lived about a block and a half away from the applicants premises since 1977. That address has been vacant for a few years and was previously a restaurant. It is a busy area across from a hospital and a block and a half away from different schools. She is opposed

to the issuance of this tavern license based on information she received at a community meeting a few months ago. At that meeting, she learned the applicants were applying under a different spelling of their name as opposed to their normal spelling. She read different articles about the past business practices of the people applying for the license and read they are not good neighbors in the buildings and their SRO's such as the Lawrence House and Esther House. She also read there were fights and violence at a bar the applicant previously owned called the Green Dolphin and read that the man who was to manage this location was looking forward to people from the Green Dolphin coming to the applicant location.

Ms. Cozzi further stated there has been difficulty over the years with a building currently being renovated and with lots and lots of people drinking in the two taverns that are about a block away and then drinking on the streets in the area of the applicant location. There are lots of aggressive drunks or drug people.

Martin Carroll has lived at 4000 N. Clarendon, 30 feet behind the applicant location, since 1993. He is familiar with 4001 N. Broadway because he used to patronize a restaurant that was at that location. He opposes the issuance of this license. His opposition is based on the fact that there was a previous liquor license in the area just north of the applicant location on Broadway. During the time that license was in existence, Mr. Carroll experienced an increase in violence and witnessed people in the common driveway he shares with the applicant location drinking, urinating, defecating, and vomiting. People were fighting in that area. That license was eight years ago.

The witness explained that he and the landlord of the applicant location share an alley. That owner has a right of ingress and egress to Mr. Carroll's property, but it is private property on the back. He is concerned about increasing traffic problems from the tavern on top of the present trespassing problems. This trespassing would also invade his sense of security and privacy.

Jeanna Guzman testified as a neighbor living at 4000 N. Clarendon and as President of the 4000 North Clarendon Condo Association. She is opposed to the issuance of this tavern license of problems with traffic, loitering, and violence that already exists in the private driveway that separates their condo association building and the applicant location. She is concerned about an increase in traffic from the bar and concerned about patrons of the bar using her driveway as a toilet, loitering, and illegally using their parking spaces. She has had to call the police about people urinating in this area and has had to call the tow company to remove people parked in her parking space. Loud people hang out until 3, 4, or 5 in the morning.

Jeffrey Manierre has lived at 4000 N. Clarendon since 1988. That is about 30 feet from the applicant location. He is opposed to the issuance of this license for the reasons previously expressed by other witnesses. He also is concerned because no one is in charge of the lot between the buildings and there are always more cars back there than should be. There is no facility for people making deliveries which trucks will park in that area and block egress and ingress.

Molly Selsby has lived at 4004 N. Clarendon since 2007. She is opposed to the issuance of this license. There is already noise and violence in the area and this tavern would add to that existing noise and violence. She also is concerned it would add to traffic in their “alley” which is already very tight.

Emelia Zuckerman has lived at 4000 North Clarendon since April of 2013, and she is opposed to the issuance of this tavern license. She is opposed to liquor at this particular address because of the noise and violence it will bring to the area. She is also concerned about more traffic problems in their “alley.”

Bill Petty lives three blocks away from the applicant premises at 840 W. Belle Plaine and is President of the Buena Park Neighbors. He does not feel the tavern license is appropriate because of misbehavior at night and traffic and parking problems. He is concerned about the applicant because of things he has heard about the Lawrence House and Green Dolphin.

Bryan Knipper has worked as a Business Consultant for the Department of Business Affairs and Consumer Protection for the last six and a half years with responsibility for processing and reviewing liquor license applications. He is familiar with the application for a tavern license at 4001 N. Broadway. That application was originally denied because the location was within 100 feet of a hospital. The witness identified City’s Exhibit 2, in evidence, as an amended denial letter dated April 29, 2013, addressed to Burim Mehmeti, Broadway Tavern, Inc., 4001 North Broadway, Chicago, Illinois 60613. That letter gave the applicant the opportunity to submit a plan of operation that would abate any deleterious impact within 20 days.

The final denial letter was issued on May 30, 2013, based on the fact no plan of operation had been received. The applicant did eventually submit a plan of operation but that plan was not reviewed because it was filed after the final denial letter.

Adam Weller has been a Revenue Investigator II for the City of Chicago for just over seven years. On November 20, 2012, he conducted an inspection of the premises located at 4001 N. Broadway to insure there were no location restrictions for that applicant location. His investigation revealed a restriction in that the applicant's property line was within 100 feet of the property line of Thorek Hospital. In the course of his investigation, he spoke with Harry Monk, the President of Thorek Hospital. This conversation was to determine the use of the professional building located at 840 West Irving Park. This building is directly across from the applicant location. His measurement of the distance between those two buildings was 70 feet, 11 inches. In the course of the conversation with Mr. Monk, the investigator learned that the professional building is connected to the hospital by a pedway on the second and third floors, and that there are medical offices and employees from the hospital that have offices in the professional building. No in-patient services occur at the professional building, but out-patient services are done independently by medical professionals. There were commercial spaces leased out to tenants in this professional bank.

The City rested its case.

George Strouton is a licensed professional land surveyor and professional engineer in the state of Illinois. He prepared Applicant's Exhibit 2, in evidence, which is a plat of survey showing the applicant's proposed leasehold to the commercial property across the street. The shortest distance between those two spots was 67 feet. The closest point from the applicant leasehold to the property line of the building used as a hospital is 199 feet horizontally along Irving Park Road, and 183 feet from the north corner of the subject leasehold to the closest point of the hospital property. The property on which the hospital is built is tax exempt and the property on which the professional building sits is taxed.

Burim Mehmeti testified he never received the letter requesting a plan of operation be submitted. He did subsequently file a plan of operation with the City, but has not received any response. He has no ownership interest in the Lawrence House or the Green Dolphin and is the sole officer and shareholder of Broadway Tavern, Inc. His plan is to run an upscale establishment with excellent gourmet Italian cuisine, craft beers, homemade recipes, great appetizers, fresh salads and fresh herbs. Deliveries will be made only through the front entrance so no vans or trucks will be parked in the alley. That alley is a private alley with a private lot. He intends to soundproof the ceiling so tenants above do not hear noise from the music. Security personnel trained in Bassett-type training will be at the door and on the floor area. This is the first time he has applied for a liquor license or any other type of city license.

He has learned from his family how to run a business. His dad taught him how to run a business and he believes he will be a great operator with a great concept about food menus. He worked for his family at the Green Dolphin owned by his father and uncle, and the Borderline



Tap owned by his uncle. He has never worked at the Lawrence House. He managed the Green Dolphin from 2003 through 2007, and supervised at the Borderline Tap. Presently, he bartends every two weeks or once a month at Green Dolphin.

Manuel Galvez is a licensed expeditor in the City of Chicago who did expediting services for this liquor application filed by Broadway Tavern, d/b/a 4001 North Broadway. On or about July 2, 2013, he went to the Department of Business Affairs and Consumer Protection to check on the status of the application and to insure all paperwork was submitted. He was told the file had been handed over to the city attorney and that he needed to contact the city attorney to find out about the status of the application. He was unable to get information on the status of the application because the application had been sent to the city attorney.

The City of Chicago has failed to prove that the applicant location is located within 100 feet of a hospital. The testimony from the revenue investigator was that no in-patient services were provided to patients in the professional building. Hospital as defined by 210 ILCS 85/3 is defined in relevant part as “any...building...devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of 2 or more unrelated persons admitted for overnight stay or longer in order to obtain medical...”

The professional building is not a hospital under the state statute. The applicant location is more than 100 feet from the hospital building.

The Local Liquor Control Commissioner can deny a license if the issuance of that license to the applicant at that location will cause a deleterious impact on the health, welfare and safety of the surrounding community. Section 4-60-040 of the Chicago Municipal Code defines deleterious impact as having an adverse effect on the value of the property, an increased risk of violations of the law, or a risk of a substantial increase in noise, litter, or vehicular congestion.

The City proposes two bases for establishing an increased risk of violations of the law under this ordinance. The first basis would be under the approach on the Vino Fino case in which specific evidence of past violations of law by an applicant are used to establish a risk of future criminal violations of the law. The City failed to establish an increased risk of violations of law on that basis. The testimony from the Alderman and community witnesses about concerns arising from what they were told about or read about the applicant's family's operation of the Green Dolphin is not competent evidence to show this applicant previously violated any of the laws of the State of Illinois or the Municipal Code of Chicago. This testimony is not specific as to what the problems were in the operation of the Green Dolphin and the City did not introduce evidence of any alleged past criminal violations by anyone while operating the Green Dolphin.

The testimony concerning the operation of the Lawrence House by alleged members of the applicant's family cannot in itself be used to impute past criminal activity on behalf of the applicant.

Under the theory of the M.J. Ontario case, the City can prove its deleterious impact based on personal observation of activity that might be worsened by the issuance of a liquor license at a certain location. The un rebutted testimony of the witnesses is that when there was a liquor license in the vicinity of the applicant location, there were problems with noise, vehicular congestion, and other similar type problems. While those activities lessened after that liquor establishment closed, those problems remain. It is reasonable that those problems will become worse with the issuance of this license at this location. Under this theory, it is the location that is the cause of the deleterious impact and not the applicant.

The issue of whether there is already noise, crime, and vehicular congestion was not addressed by the applicant in his testimony. He did speak of steps to alleviate problems but did not dispute the problems exist. Much of his testimony dealt with his plans for an upscale restaurant but this application is for a tavern license and the lease is for a tavern with carryout and delivery.

On this theory, the City did prove the issuance of this tavern license would cause a deleterious impact on the health, welfare and safety of the surrounding community. The testimony in the record supports the position that the Plan of Operation was not presented to the Local Liquor Control Commissioner in a timely manner. As such, it was appropriate for him not to consider the proposed terms of that Plan of Operation.

The denial of the tavern license 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: November 19, 2013

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member