

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Pete’s Food & Liquor, Inc.)
d/b/a Pete’s Food & Liquor)
Applicant (Packaged Goods))
for the premises located at)
5249 West Chicago Avenue) Case No. 13 LA 28
)
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

On May 30, 2013, the applicant’s application for a Packaged Goods license was denied by Gregory Steadman in his position as the Local Liquor Control Commissioner of the City of Chicago. The basis of the denial was that the 15th District Police Commander was objecting to the liquor license due to concerns of law enforcement issues such as loitering and criminal activity at this location. The applicant filed a timely Notice of Appeal with the License Appeal Commission of the City of Chicago.

A synopsis of the evidence on the record will be helpful to an understanding of this decision.

Prior to the start of the evidence, the applicant’s attorney made a Motion to Exclude the testimony of the 15th District Police Commander Barbara West. The basis of this motion was

that the Commander's objection to the license, which was sent by email on May 30, 2013, was not a timely objection pursuant to Section 4-60-40 (e) of the Chicago Municipal Code. That provision of the Chicago Municipal Code sets forth requirement that notice of an application for a liquor license must be published in a newspaper of general circulation in the city four times over a two week period. Notice is also required to state "that any objection to the granting of the license shall be made to the local liquor control commissioner, in writing, signed by the objector, within 40 days from the date the license application was filed." The applicant argued that the email from Commander West was not timely since it was sent more than 40 days.

It must be pointed out that the applicant is not arguing that it did not have timely notice of the fact that the Commander was objecting so as to violate any due process rights; the argument is time based.

This is not a criminal court and the powers of this Commission are limited to those set out in the Illinois Liquor Control Act. This Commissioner does not feel that the Liquor Control Act empowers this Commission to enter orders suppressing evidence or barring evidence under any circumstance. Specifically, the Liquor Control Act does not empower this Commission to bar or suppress evidence for a late objection by a police commander. The section of the Municipal Code relied on by the applicant deals with notice to the public. It does not deal with a time limit for objections from elected officials or police commanders. If there is a question of a denial of due process rights, this Commission can address them within the sphere of reviewing "whether the local liquor control commissioner has proceeded in the manner provided by law" as

allowed under the Illinois Liquor Control Act. The motion on request to bar the testimony of 15th District Police Commander Barbara West is denied.

Barbara West has been the Commander of the 15th District since March of 2012, and a Chicago Police Officer for 19 years. One of her responsibilities is to review liquor license applications in the 15th District, and she did review the application for 5249 West Chicago Avenue. The area around 5249 West Chicago Avenue is business with some residential. There are several gas stations and a boarded up multi-unit building across the street. A new center for teenage mothers opened down the street. There is a liquor store to the west and to the east a couple of 24-hour stores, a Dunkin Donuts, Subway, and another gas station. The liquor store is Belmont Liquors and it is at 5232 West Chicago Avenue about a block and a half away.

Commander West objects to the issuance of the license because of the resources that will need to be deployed to address some of the issues they have and because there is already a striving liquor store in the community. In addition to Belmont Liquors, there is another liquor store two and a half blocks east of the applicant premises. She is aware 5249 West Chicago was previously licensed to sell liquor from May 2011 until April 2013, as Jeannie's Discount Liquor and Grocery. During her period as District Commander while Jeannie's was operating she observed people loitering in front of the location and loose cigarette sales. When Jeannie's stopped selling liquor in April of 2013 and actually shut down, all that traffic just stopped. Since Jeannie's closed there are still loose cigarette sales and loitering, but it takes place in front of the open liquor stores, gas stations, and the late hour stores. The gas stations are located at 5327 W. Chicago and 5150 W. Chicago and the store is about 5300 west on Chicago. The liquor store at

5000 west is responsible for several calls for loose cigarette sales, as well as fights and some robberies. The store in the 5300 block gets fewer calls because it is gated off so that there is only a little pathway to get in and out of the store.

It is the Commander's opinion that the addition of a packaged goods liquor license at this location will add to the constant loitering and fighting, and will impact police resources by requiring the police to report to disturbances at that location as opposed to not addressing major crimes in the area. If this store is open community residents will tend to loiter. Loose cigarette sales begin to make money to buy liquor or sustain a habit. From that comes congregation for narcotic transactions. This loitering happens when stores like liquor stores or gas stations are open. If the store is shut the loitering stops. It tends to be mostly in front of liquor stores. The narcotic transactions are in front of or close by liquor stores. The store is a guise of some sort. She sees this all the time. The fact that the applicant plans to sell food does not change the Commander's objection. The Commander has met the applicant and the proposed manager and has no objections to either of them personally.

The Commander identified City's Exhibit 4, in evidence, as a list of calls for service from January 1, 2013 through September 23, 2013 for the location between 5200 and 5400 West Chicago. The total number of calls is 759 and it covers various types of disturbances. City's Exhibit 5, in evidence, lists 905 calls for service for this location from January 1 through December 31, 2012. The calls are various types of disturbances and include a shooting at a gas station near 5335-27 west on Chicago. This location search included where Jeannie's was operating in 2012. The Commander opined that is a substantial number of calls for a two block

area. City's Exhibit 6, in evidence, is a list of 686 calls for service for that two block location for January 1, 2011 through December 31, 2011. The calls for service are varied and the police respond to each call for service.

The Commander described the area surrounding 5249 West Chicago currently as an area with crime issues in terms of loitering among people selling loose cigarettes and trying to attempt to sell dope. There is a multi-unit building in disarray across the street. There is a store and strip area kitty corner with constant loitering. This testimony is based on her personal observations. Without liquor at 5249 West Chicago, police resources are impacted by crime in the surrounding area. To address the issues primarily between the 5100 and 5400 block of Chicago, she has placed a police car. That area has most of the issues with loitering and disturbances and it requires the placement of a car because of constant attempts to control the area. A new liquor store will add to the pull of additional resources she may have to place there. The elderly, children, and mothers using Chicago Avenue are bothered by people loitering outside locations. These people solicit money and change to buy alcohol and cigarettes. Girls on their way to high school have been bothered or teased. The addition of this liquor store at this location will have a negative impact on the community as a whole and add another problem where there have been some positive effects.

Commander West testified she saw loitering at 5249 W. Chicago Avenue when it was open in the afternoons and evenings more than once and less than ten times. She did not know how many of the calls for service dealt with loitering in front of the store and her testimony is from her own official observation. These events would have been in the early evening and she did observe sales of loose cigarettes and what she believed were drug transactions. She did not make arrests but would call for a tactical car. With respect to Exhibit 4, the Commander found one call relating to the applicant's address for a false ADT alarm, a March 2013 call that did not require police service, and a May 6, 2013 call about selling narcotics at this location. The store was closed on that date. City's Exhibit 4 lists only three calls for service at this location.

City's Exhibit 5, in evidence, shows a call for service from Jeannie's Discount Liquors on February 27, 2012, regarding an attempted robbery. This document does not give any information as to whether this incident was alcohol related. A March 2, 2012 call from Jeannie's was about someone mentally ill causing a disturbance. A call from Jeannie's on May 6, 2012 requested an ambulance, and a July 7, 2012 call from Jeannie's had no actual police service. Jeannie's made an August 3, 2012 call about a battery in progress, and an August 9, 2012, call about a vice complaint. The store also called a report of counterfeiting on October 1, 2012. Another deceptive complaint was called in by the licensee on December 13, 2012. A call was made by a Darnell Murphy on November 12, 2012, about a theft but the Commander did not know who Darnell Murphy was or if money was taken.

The first call relating to the applicant location in City's Exhibit 6, is a request for a supervisor on February 25, 2011. The Commander could not state why a supervisor was called

and did not know if Jeannie's Discount Liquor had opened as of that date. A call from Jeannie's on June 3, 2011 with no police services is noted for June 3, 2011, and Jeannie's called in on July 2, 2011 for shots being fired. No report was generated with respect to that call. There were a series of calls from the store on December 23, 2011, about a man with a gun and a battery. There were three calls about that incident. There were a total of 5 calls for the applicant address in 2011.

The Commander stated that the impact on police resources that would be affected by a liquor store at this location dealt with the entire block. She has never been in the store and did not know the previous owner. She does not know if there have been any arrests at 5249 W. Chicago, and is not aware of the existence of any alcohol related crimes that occurred because of the previous liquor store. She does not know if there were more calls made about the location when it did not have a liquor license. The Commander believes there are 20 units in the vacant building across the street. She has witnessed very little loitering and no loose cigarette sales at the liquor store at 5333 West Chicago. She is not sure of any arrests at that location and did not run the calls for service for that address. She does witness loitering at the 5000 W. Chicago liquor store every day. She has witnessed loitering at a gas station at 5327 West Chicago. The applicant location is not designated as a hot spot location. The teasing of girls has been observed at other liquor stores and she is not sure it happened at 5249 W. Chicago. It is the Commander's opinion that crime has increased in the Austin neighborhood over the past few years. She does feel sale of liquor impacts loitering in that people stand outside liquor stores drinking out of a bottle that they share with friends. People loitering tend to bicker with each other and that can lead to fights. Fights then can lead to shooting. Loitering can also lead to robberies of people

coming out of stores. These problems may not be reported at the specific address of the liquor store but can happen along the whole block.

The Commander admitted she is opposed to all new packaged goods liquor licenses in her district and a moratorium has been issued.

Prior to the City resting its case, the parties stipulated there is now a moratorium in effect for liquor licenses at this location.

At the end of the City's case, the applicant made a motion for a directed finding. That motion was denied.

Pierre Anton Rachal is the owner of Pete's Food and Liquor. He graduated from the United States Military Academy in West Point, New York, and served six years on active duty and two years in the Illinois National Guard. He served two tours in Iraq and received several awards for his service. He lives at 4040 West Dickens, which is a couple of miles and an eight minute drive from the applicant location. If this license is granted, he intends to sell fresh produce and grocery items but would sell alcohol to help the margins since it would be difficult to survive off the produce. Fifteen to twenty percent of alcohol sales would be needed to make it profitable. He now passes the store three to five times a week in his commute to his day job. He would go by three times a week when the store was operating. He saw loitering down the street by the Dunkin Donuts but not by the store. He never saw anyone selling loose cigarettes and did

not see people with open alcohol. He currently works as a sales engineer for Shetland Group which is a company that manufactures bearings.

Mr. Rachal has been attending CAPS meetings for five months and has communicated with Alderman Mitt's office. He visited her last summer.

In his opinion, crime in the area of the store has decreased since the area seems dead. The building across from the store is boarded up and shuttered. When he drives by in the mornings and evenings there is little activity or loitering in the area. He feels there is a void in the area for a store that would sell fresh produce at a low price. It seems like a good opportunity that would be profitable.

The applicant stated he does not go by the store often between the evening hours of 8 to 11. He estimated maybe two to five times a month. He has not opened because it would be hard to be profitable with groceries alone. He has no involvement with the operation of Jeannie's. If the license is granted, the applicant would not leave his full-time job but would be there five days a week. He identified City's Exhibit 8, as a letter he sent to the Local Liquor Control Commissioner setting out conditions under which he would run the business if the license was granted. These include:

1. Installation of surveillance cameras outside of 5249 West Chicago and strict enforcement of the no loitering policy; he would not allow loitering in front of the store.
2. Attendance at CAPS meetings.

3. Hiring a licensed security guard on the weekends and holidays probably starting from six to midnight for the deterrence of crime.
4. Strict enforcement of law inside the store by training employees on things like sale of alcohol to minors.
5. Limited hours of operating/late nights to be determined after consultation with the District Commander.

City's Exhibit 8 was allowed in evidence.

The applicant is aware the sale of loose cigarettes is a problem in the surrounding areas but repeated he has not personally seen these sales. He has seen loitering by Dunkin Donuts at times in the evening but never in the morning. He has not seen loitering by the boarded up building or by Belmont Liquors.

Jacques Rachal has been approved to be the applicant's site manager at 5249 West Chicago, and he served as the site manager for the previous owner Jeannie's Discount Food and Grocery. He worked in that position from April of 2011 through January of 2013. In that job, he was responsible for making sure the operation ran smoothly. He worked weekdays from 5:00 p.m. until 12:00 a.m., and until 2:00 a.m. on Saturday mornings, and 11 to 3 on Sundays. In that time Jeannie's was never given a liquor citation. There was no loitering because he would disperse people by using a loud speaker. He did not see anyone selling loose cigarettes or having open alcohol within a block of the store down the street. The store is currently closed and it is a ghost town there with no loitering by the store.

Over the City's objection, Applicant's Exhibit B, which contains signatures in support of the issuance of the license was allowed in evidence. The applicant was allowed to make an offer of proof with respect to documents obtained from the Office of Emergency Management Communications through a Freedom of Information request.

The witness installed a PA system specifically to deter loitering. He had a two camera system pointing by the door and if anyone was standing more than five minutes he would ask them to leave and they would leave. He will be working 40 hours as manager and full-time employee at Pete's. He received no loitering signs from the CAPS meetings and wants to install blue strobe lights. He has seen loitering by the gas station but has not seen people hanging out drinking beer by Belmont's.

There are loose cigarette sales in the area for a store by his house called Super Low which is a couple of hundred feet away from Pete's. He sees people hanging around there but does not know if they are selling narcotics. He has not seen people asking for money in a 200 foot radius of Pete's. The courtyard building across from Pete's has been boarded up four or five years and people do not loiter in front of it. He has not seen groups of men teasing any of the girls from the single mother's shelter. He has not noticed loitering in front of the two Belmont liquor stores.

Stanley Banks has been a Chicago Police Officer in the 15th District for twenty-four years. He currently works patrol from 10:30 at night until 7:30 in the morning. He has never been dispatched to or seen any loitering at 5249 West Chicago. There is a lot of loitering by the gas station at Lockwood and Chicago and at the corner of Chicago and Laramie. Those locations are half a block and two blocks from 5249 West Chicago. He never saw anyone selling loose cigarettes in front of Pete's and has never seen anyone with open alcohol outside of the store. He has not seen narcotics transactions or gang related activity. He has also lived in the 15th District 35 of his 40 years and he currently lives six or seven blocks away. He has seen loitering by the Belmont liquor stores and has seen people drinking or trying to sell drugs. He is aware of arrests at the other liquor stores. In his opinion, crime has decreased in the 15th District.

Officer Banks stated he was testifying in his official capacity as a police officer and as a friend of Jacques. He was not sent by the Chicago Police and is aware Commander West objects to the issuance of this license. He has been assigned to the prisoner wagon the last two years. He transports prisoners but works other jobs as needed. He was present at the hearing because Pete's is not a bad establishment and they sold liquor before without problems. He does not feel the issuance of this liquor license will impact crime in a negative way. He has known Jacques for fifteen years and Jacques has helped him with laboring tasks at his home. He has seen loitering at the other liquor stores and has seen people drinking and selling drugs at the gas stations and at Belmont Liquors.

Cory Maggette worked as a cashier/stock person at Jeannie's from August of 2011 through May or April of 2013. He worked from 5:00 p.m. until closing time and never made a phone call to the police for any reason. He does not know of any liquor related citations being issued while he worked at Pete's. He never saw loitering or people with open alcohol at or near the store. He has not seen loitering in front of the other liquor stores on Chicago Avenue from Austin to Cicero. He has never seen any type of crime in the area of the store. He has never seen loitering by Belmont's or by the gas station.

Florence Rankin lives at 941 North Lorel which is four or five blocks away from 5249 West Chicago. She is 73 years old and has lived on Lorel for 36 years. She went to Jeannie's to buy merchandise including alcohol about four to five times a week. She relied on Jeannie's for her basic household goods. She never noticed loitering outside the store or noticed anyone drinking open alcohol. She does not object to the issuance of this license. She believes crime has decreased. She did see loitering outside of Belmont Liquors quite frequently.

Robert Rachal has lived at 841 North Laurel which is a block and a half from the applicant premises for eight and a half years. He went to Jeannie's to buy small items and liquor. He did not see loitering outside of the store or saw anyone with open alcohol or selling loose cigarettes in front of the store. He saw the sale of loose cigarettes at Chicago and Laurel. He has not noticed loitering by Belmont Liquors or by any other gas station or grocery store within a two block radius of the store. He is not related to Jacques Rachal.

Denita Nunnery-Harris has lived in the neighborhood at 713 North Lathrop for forty-two years. She would go to Jeannie's to buy items three to four times a week. She never noticed anyone loitering, possessing open alcohol, or selling loose cigarettes outside of the store. She has noticed the sale of loose cigarettes further down the block.

Ronnie Green is 55 years old and lives about 500 feet from 5249 West Chicago Avenue. He purchased everything from food to detergent to alcohol from the store when it was open. He never noticed loitering, open alcohol, or selling loose cigarettes in front of the store or within a two block radius. He has not seen those activities by Belmont Liquors or by the gas station. He knows Jacques Rachal as a customer and does not consider Jacques to be a friend.

Tracy Williams lives at 737 North Lathrop and would go to the store at 5249 West Chicago every day when it was open. She would go at different times depending on if she needed something. She never saw loitering, open alcohol, or selling loose cigarettes in front of the store or in a two block radius. She knows Jacques as a customer and not as a friend.

The City of Chicago Municipal Code allows the Local Liquor Control Commissioner to deny an application for a liquor license if "the issuance of such license would tend to create a law enforcement problem." That is the only basis set out by the Local Liquor Control Commissioner as the reason why this license was denied.

There are generally two approaches pursued by the City in "law enforcement" denials. In the Vino Fino case, the Appellate Court interpreted the term "tend to create a law enforcement

problem” as meaning that the applicant had a tendency to violate liquor laws or the law in general. Under this approach, the focus is on the actual applicant and whether the actual applicant’s background is such that the applicant would tend to violate liquor laws or the law in general. That is not the situation in this case. There is no evidence to suggest that Pierre Rachal’s history and background is that of a person who violates the law. To the contrary, the applicant is a graduate of West Point who served this country for six years in active duty and two years in the Illinois National Guard. He served two tours of Iraq. There is no evidence in the record that the proposed manager for the store had a history of liquor violations while he was the manager of the store that previously had a liquor license at this location. There is no evidence in the record to establish that the City proved the issuance of this liquor license would tend to cause a law enforcement problem under the Vino Fino approach.

A second approach to these cases can be referred to as the “M.J. Ontario” approach. Under this approach, the actual applicant need not be the cause of law enforcement if the issuance of the liquor license would tend to exacerbate existing law enforcement problems personally observed by the witnesses. The record in this case contains the testimony of Commander West that she personally observes criminal activity in and around the applicant location. The type of crimes ranges from loitering to sale of loose cigarettes to drinking on the public way to narcotics transactions.

The Commander testified she has personally observed this activity and her personal observations were supported by the records for calls for service in or about the applicant location for the last few years. There is sufficient evidence in the record for the City to have met its

burden of proof on the fact that there are existing law enforcement issues in and around the applicant location. The Commander also testified that she observed some of those crimes in the area of the applicant location when there had been a liquor license at that location. When that store shut its doors, the traffic in that area stopped. The Commander also testified that this type of liquor store leads to problems because a person will buy a bottle of liquor to share with friends on the street. As they drink the liquor problems and fights break out which leads to the need for police response. This testimony was disputed by Police Officer Stanley Banks and some of the other witnesses for the applicant. Some of the applicant's witnesses did testify that they also have seen this type of criminal activity in the area of the applicant location.

This Commissioner finds that the testimony of Commander West was sufficient for the City to meet its burden of proof that the issuance of this license would tend to create a law enforcement problem under the "M.J. Ontario" case.

It was referenced in the record and put in evidence by stipulation that there is now a moratorium in the area. This decision was not based in any way on that fact and the moratorium was not considered relevant or material to the decision in any way.

The denial of the packaged goods license for Pete's Food and Liquor, Inc., for the premises located at 5249 West Chicago 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: January 22, 2014

Dennis M. Fleming
Chairman

Donald O'Connell
Member