

LICENSE APPEAL COMMISSION CITY OF CHICAGO

N&K ENTERTAINMENT, LLC)
d/b/a CACHE)
APPLICANT (TAVERN))
)
For the premises located at)
1446 N. Wells St.)
Chicago, Illinois 60610)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

Case No. 23 LA 05

DECISION AND ORDER

**DECISION of Commission Chair PARRY and Commissioner BERG, with
Commissioner GIBBONS DISSENTING**

A final denial letter was issued by the City of Chicago (“City”) Local Liquor Control Commission(er) (“LLCC”) on October 20th, 2023, denying the application for a TAVERN liquor license submitted by N&K ENTERTAINMENT LLC, d/b/a CACHE, for the premises located at 1446 N. Wells St., City of Chicago, County of Cook, State of Illinois (“Applicant”). For the reasons stated herein, the denial of the TAVERN liquor license is UPHELD.

JURISDICTION

This appeal was heard pursuant to the authority granted to the License Appeal Commission of the City of Chicago (“License Appeal Commission” or “LAC”) by the State of Illinois under (235 ILCS 5/) Liquor Control Act of 1934 (“Liquor Control Act”). The appeal was timely and properly filed by the Applicant. Applicant seeks review of a denial of its application for a late hour liquor license pursuant to 235 ILCS 5/7-9.

BASES FOR DENIAL

1. “Deleterious impact issues raised by the 2nd Ward alderman and surrounding community”; and
2. “Law enforcement concerns of the 18th district police commander”.

(Final Denial letter dtd. October 20th, 2023).

SUMMARY OF PROCEEDINGS

HEARING DATE(S): February 22nd, 2024 (transcript cited “T1”)
March 7th, 2024 (transcript cited “T2”)

APPEARANCE(S): Assistant Corporation Counsel Morgan Johnson, Esq. represented City. Appearances by Harlan C. Powell, Esq. of Powell Junia, P.C. and William D. O’Donaghue, Esq. of Georges & Synowiecki, Ltd. were filed on behalf of Applicant.

Evidence Presented

City Exhibits:

1. Affidavit of Local Liquor Control Commissioner (Bates No. 0001)
2. Denial Letter dtd. September 8, 2023 (Bates Nos. 0002-0003) and Final Denial Letter dtd. October 20th, 2023 (Bates Nos. 0004-0005)
3. Application for Business License and supporting documents (Bates Nos. 0006-0083)
4. Letters from 18th Dist. Commander and 2nd Ward Alderman (Bates Nos. 0084-0092)
5. Letters/emails of Objection (Bates Nos. 0093-0101)
6. Rejected Plan of Operation dtd. September 26th, 2023 (Bates Nos. 0102-0104)
7. Add’l documents/information considered in denial (Bates Nos. 0105-0162)
8. (a-k) Crime data for 1200-1600 N. Wells St., Chicago, IL for periods 2019-2023
9. (a-o) Communications - BACP and Applicant in re license process, progress and Plan of Operation chronologically reversed June 15th, 2023, to December 2nd, 2021.

Applicant Exhibits:

1. Request for Community Input from 2nd Ward Alderman
2. List of premises liquor-licensed operators from 1963-2020
3. (p. 1-2) Photos of exterior of premises and (p. 3) Exterior door enlarged photo

Caselaw, Additional Ordinance(s) and/or Statute(s)

Move N Pick Convenience, Inc. v. Emanuel, 30 N.E.3d 661 (Ill. App. 2015)

Jacobsen v. ILCC, 423 N.E.2d 531 (Ill. App. 1981)

Ted Sharpenter, Inc. v. Illinois Liquor Control Com'n, 499 N.E.2d 669 (Ill. App. 1986)

Municipal Code of the City of Chicago ("MCC")

MCC § 4-60-040 (h) -- in relevant part: "The local liquor control commissioner shall review the application materials and any written objections to the granting of the license. The review period for every type of license shall be no fewer than 35 days and no longer than 90 days after the date the license fee is paid, except that there shall be no time limit on review of an application for a late-hour license or for issuance of a license within an area described in Section 4-60-022 or Section 4-60-023... The local liquor control commissioner shall deny an application if the applicant fails to satisfy the requirements of this chapter, and may deny an application for a city liquor dealer's license if the issuance of such license would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located. A deleterious impact is presumed to exist whenever there have been a substantial number of arrests within 500 feet of the applicant's premises (measured from the nearest exterior wall of the premises) within the previous two years, unless the applicant has adopted a plan of operation that will provide reasonable assurance that the issuance of the license will not have a deleterious impact.

If the applicant is seeking a liquor license for a premises and the local liquor control commissioner finds that, for the subject premises identified in the application within the previous two years, a license application has been denied under this subsection (h) because the local liquor control commissioner has determined that issuance of the license would have a deleterious impact on the health, safety or welfare of the community, the application must be denied unless the applicant can prove by clear and convincing evidence that he has devised a plan of operation that will provide reasonable assurance that the issuance of the license will not have a deleterious impact. In any case in which the local liquor control commissioner finds that an application must be denied under this paragraph, he shall notify the applicant of that finding and afford the applicant 20 days in which to submit a plan of operation, and the time for a final ruling on the application shall be stayed until 35 days after the period in which the plan may be submitted has expired. The plan may include conditions upon the applicant's operation of the premises that are useful or necessary to mitigate a deleterious impact, including but not limited to providing security personnel, restricted hours of operation, providing outdoor lighting, the display of signs, providing

trash pickup services, or any other reasonable restrictions on business practices. An applicant's failure to adhere to a written plan of operation approved by the commissioner pursuant to this section shall constitute a basis to impose a fine and to suspend or revoke any liquor license subsequently issued, as appropriate. Nothing in this subsection (h) authorizes the issuance of a license when such issuance is prohibited under Section 4-60-180.

MCC § 4-60-040 (e) -- "Upon payment of the license fee for a liquor license or for an expanded establishment amended liquor license, the Commissioner of Business Affairs and Consumer Protection shall, within five days thereafter, cause to be published on the department's website in a location accessible to the general public a notice (i) stating that application has been made for a City retailer's license for the sale of alcoholic liquor; and (ii) specifying the type of license sought by the applicant, the date the license fee was paid, the applicant's name, and the street number and location of the premises covered by the application. The notice shall also 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 35 days from the date the license fee was paid, and shall set forth the specific grounds of the objection. The publication may contain notice of more than one application for a license by different persons for different premises."

City's Case in Chief

Testimony of Bryan Knipper, in relevant summary (T1, p.17-107)

Witness Knipper introduced himself as a Business Consultant Supervisor for the City's Department of Business Affairs and Consumer Protection ("BACP"), overseeing consultants working for BACP in the licensing of hospitality, liquor, public place of amusement ("PPA") and special events. Witness explained the Application process generally, and that in this case a licensing request was started online within that process (T1, p.19, 24). He testified that he has personal knowledge of the Application at issue in this matter (T1, p. 24). Witness explained that there is a conditional application process by which an applicant can seek approval prior to the build out of a premises. "It allows them to get a determination from the liquor commissioner whether or not they would be allowed to apply for liquor [licensing]" (T1, p. 22). Considerations for conditional approval include "fingerprints, the paperwork that they are submitting, a location check to make sure they are not within 100 feet of a school or home for the aged or something like that, that their finances are okay" (T1, p. 22). If conditional approval is granted there is one year

to finalize the build out, getting building permits and passing inspections. “It allows applicants the opportunity to find out whether or not they can go forward with a venture without having to invest huge sums of money into a location.” (T1, p. 22-23). Witness described generally things that would be considered in a full liquor license application, including basic documentation, owners and background checks, financing, leases, site and floor plans, zoning, community and voter input in support or objection to the business including the City Council representative/alderman and police commander for the district in which the premises is located (T1, p. 23-24).

Witness explained that this Application was submitted and completed by payment of the application fee November 29, 2021, and that it was initially denied January 21st, 2022 because BACP had not completed a location review and a decision was required to be made within 60 days of the application that would allow it to move forward (T1, p. 25, 31, 35). He noted that the business consultant assigned to the application file gave conditional approval on January 5th, 2022, meaning that it was the evaluation of the business consultant that the basic documentation for the application has been submitted and is ready for review (T1, p. 33-34) but that there was never a conditional approval for the liquor license generally (T1, p. 44). He recalled there were then issues upon his review on February 4th, 2022 with incorrect information supplied by the Applicant as to her individual history form, “I believe the Applicant had said that she confused something on the individual history form and listed her son rather than her spouse,” discovered on a mismatch of names against a divorce decree. In March 2022, rather than an outright denial, Applicant was afforded the opportunity to submit a Plan of Operation, and later that month, March 23, 2022 the Plan was submitted (T1, p. 26-27). In May 2022 feedback was given to Applicant’s attorney about additional items that needed to be addressed in the Plan of Operation (T1, p. 27). Witness

explained there was “back and forth” with the business consultant and Applicant’s attorney (T1, p. 20). In order for final inspections to take place by all the required City departments (such as health, buildings, electrical, plumbing, etc.) the business has to be in the condition it would be in to open to the public (everything fully installed and placed) (T1, p. 100-101). The Witness noted that before expending resources like furnishing the space and arranging final inspections an applicant could seek a conditional approval letter, but this Applicant did not do so (T1, p. 102). BACP Business Compliance and Enforcement (“BCE”) did the location check (verifying the address and that the address is not within restricted areas around schools, etc.) following corrections made in February by Applicant to her documentation and fingerprinting, and then gave a conditional approval as to the location only, but no conditional approval as to the license generally was ever sought or given. (T1, p. 26, 29, 35, 45, 87-89, 103). On October 25th, 2022 an email was directed to Applicant’s attorney to asking when Applicant anticipated scheduling inspections and whether the suggested additional items were added to the Plan of Operation. (T1, p. 27; City Exh. 9H). Witness said he didn’t see anything else from Applicant until the attorney contacted BACP to schedule inspections March 14, 2023 (T1, p. 28). In May 2023, the premises was remapped to a new ward (T1, p. 28, 84). Witness testified there was communication with the new aldermanic ward office regarding the Application, and that the new office was initially under the mistaken impression there was a moratorium for new liquor licenses for that part of Wells Street (T1, p. 36-37). At some point Witness had a conversation with a David Diaz from the ward office in which it was relayed to the Witness that there were community concerns about the nightlife activity on Wells Street and that attorney for Applicant had represented to the ward office the Application would be for a late hour license, to which Witness responded that was incorrect. The Alderman objected to the application. (T1, p. 37-38). Applicant's attorney filed an intake

form with the ward office with the contact phone for the owner and name of the attorney indicating the establishment planned to be a tavern open from 10 p.m. to 4 a.m. (Thursday, Friday, Saturday), with 10-12 employees, the landlord's name and occupancy of 99 as part of the documents included in the application file (City Exh. 7, Bates Nos. 0161-0163). LLCC relied upon the letters from the former and current police commanders (only the current objecting to the application) and letters of objection from the Alderman and the community in making the denial decision (T1, p. 40-44; City Exhs. 4-5). Applicant was sent an initial denial letter September 8th, 2023, giving Applicant the bases of the denial (deleterious impact and law enforcement concerns). The LLCC gave a further opportunity to submit another Plan of Operation (T1, p. 45-46, City Exh. 5, Bates Nos. 0002-0003) which was submitted September 26th, 2023 (T1, p. 48-49, 74, 76; City Exhs. 6 Bates Nos. 0102-0104, 9N-O). The new police commander issued a letter outlining seven bullet-pointed concerns for public health, safety and welfare August 23rd, 2023 (prior to the Plan of Operation submitted in September 2023) (City Exh. 5, Bates Nos. 084-085) and then another outlining five bullet-pointed concerns on October 3, 2023 (after the Plan of Operation was submitted) (City Exh. 5, Bates Nos. 086-087). The new Alderman also sent letters of objection before and after the submitted Plan of Operation, on September 1st and October 17th, 2023, respectively (T1, p. 49-50, 76-77; City Exh. 4, Bates Nos. 086-087, 091-092). It did not appear Applicant was sent copies of those letters (T1, p. 77-78, 82-83). The witness admitted that it would have been easier for Applicant to amend the proposed Plan of Operation if it had the letters of objection (T1, p. 82), but those are not sent by the commanders and ward offices to applicants (T1. p. 95). Business consultants may suggest to an applicant to contact the police commander directly or may highlight some items that should be in the plan (T1, p. 96). There is nothing in the law that mandates multiple chances to submit a Plan of Operation (T1, p. 96-97). Witness testified that it may be

good to have a little back and forth negotiation between business consultants and applicants for simple revisions on a Plan of Operation, as opposed to when there is a great divergence in what is expected and proposed (T1, p. 97-99). Upon review of the revised Plan of Operation and letters from the new police commander and Alderman and the file packet, LLCC issued a final denial letter October 20th, 2023, asserting the Plan of Operation was not sufficient to override the bases of the initial denial (City Exh. 5, Bates Nos. 004-005).

As to notice to the community and area voters, Witness testified a legal notice must appear a couple of days a week in a local paper for two or three weeks and post cards are printed and sent to registered voters within a 250-foot radius of the premises seeking the license and a notice also appears on City's website of applications. The postings must be done for at least 35 days before a license can be issued. The premises must also post a notice where passersby may see it. It appeared that had been done in this case. (T1, p. 58-62). Of the 473 voters to which notices were sent, there were "six-plus" voter objections to the license (T1, p. 62-63; City Exh. 7, Bates No. 105) and eight letters of objections submitted (T1, p. 63-65). When asked whether the law authorized a second notice, Witness responded that there is no mention of a second notice (T1, p. 65). He testified the second notices were issued because of the changes in the ward map and new aldermen needing to be aware of pending applications in their wards, and that it had been almost 18 months since the initial application and the first round of notices. He testified he knew of nothing prohibiting a reissue of notices. He testified that when the second postcards were sent, the 35-day deadline date was not adjusted from the first round of postcards on the printed card. (T. 90-93). Witness also noted that there is nothing he has seen in the Municipal Code that says objections can't be made after that 35-day window but before the application is approved and that the City considers it a minimum of 35 days to wait before a license can issue and that generally it doesn't want to ignore

voter comments while the application is still awaiting other items to be submitted or completed (T1, p. 104-105).

Regarding the Alderman's second letter of objection, Witness stated that he was never given any materials related to a survey mentioned by the Alderman in that letter, in which the Alderman stated 294 of 346 responses to the survey his ward office conducted opposed the license (T1, p. 84-86).

As to the switch in aldermanic wards, Witness testified that when the application was initially filed in November 2021, it was in the 27th ward and the alderman then did not file an objection, but the police commander at that time filed an objection, it appeared to the witness, based on a lack of information about the business and its name and then revised that position May 24th, 2022 to indicate he no longer had an objection (T1, p. 65-69). Witness agreed that at that point the application appeared to have a lot of boxes that had been checked and there was no issue with the owner having a criminal history, the zoning checked out and the location was conditionally approved (T1, p. 70-72). Witness did not know why the LLCC determined there needed to be a Plan of Operation, except that there had been numerous businesses on Wells Street that "received significant pushback from the community, and there are just concerns over taverns in general" (T1, p. 72), and that a Plan of Operation is a tool used to make sure applicants understand their legal duties to comply with laws and cooperate with the community and policing. The Witness did not know of any "appeal" process for when a Plan of Operation needs to be changed (T1, p. 106). Witness answered, "correct," when counsel described the Plan of Operation as going above and beyond what is statutorily required of a licensee. (T1, p. 73). Witness also testified that Applicant's Plan of Operation lacked specificity as to what actions would be taken to

address concerns and gave examples regarding concerns of “loitering” and specifics of how it has been addressed by other applicants (T1, p. 93-95).

Testimony of Michael Barz, in relevant summary (T1, p. 108-173)

Witness identified himself as the Chicago Police Department (“CPD”) Commander of the 18th District (“police commander”) as of June 2023 for the area that includes the premises at issue in this case (T1, p. 108-111). He described the area where the premises is, generally, referencing 12-to-15 liquor-licensed establishments in a two-block area called Wells Street Corridor (on Wells Street from North Avenue on the north to Division Street on the south). Witness opposes this Application. (T1, p. 110). He explained that some of the things he considered in his analysis were community input from people he had spoken to or heard from opposing the tavern license at that location and concerns about the number of establishments that were already there; aldermanic opposition and the alderman’s desire for a moratorium on tavern licenses in that area; crime, public safety issues and calls for service in that area; the number of other taverns in the area; the limited police resources; and the fact that the location is in a heavy pedestrian and congested vehicular traffic area with one lane of traffic in each direction. To familiarize himself with the area, Witness did “walk and talks” in which he walked the area and met with community members and community associations like the Old Town Merchants Association (Wells Street). He also attended meetings with same regarding public safety concerns. He described the area as densely populated. (T1, p. 110-114)

Witness explained he reviewed the Plan of Operation (T1, p. 158) prior to authoring his August 23rd, 2023, objection letter to the LLCC expressing concern about the expected increase in traffic, noise, litter, garbage, concerns about loitering and community concerns about police resources to the community being diverted to vehicular traffic control, calls for service and reports

of crime in that area. The witness testified the Plan of Operation did not sufficiently address his concerns and that overall, the plan was vague for what the witness coined “kind of a unique location.” He also felt retention of video from security cameras should have been 30 days, over four times the planned seven-day retention. In his experience there have been law enforcement problems with special promotions and other applicants have addressed concerns like that by adding to their Plans of Operation things like restrictions on day parties, brunch parties, theme nights, and bottle service. (T1, p. 114-119).

As to the former 18th District Police Commander, the Witness explained that he now is a Deputy Chief and oversees the 1st and 18th Districts, but that Witness was not aware of the former Police Commander’s letters or his positions regarding Applicant when he authored his own letters of objection (T1, p. 120-121).

Witness described City Exh. 8(A-K) as reports and statistics drawn from various databases he generated regarding crime and service calls in the area of 1200-1600 North Wells in preparation for this proceeding and spanning 2019 through February 20th, 2024. The underlying data is input from police reports, calls for service, citizen inquiries and OEMC (Office of Emergency Management & Communication). Witness noted that there was a reduction in crime from calendar year end 2022 to 2023 of 16.4 percent, dropping from 330 to 276 in reported crimes and about a 40 percent drop in 2020 from 2019 which the witness attributed to COVID; and 99 fewer crimes reported in 2023 than were reported in 2019 (pre-CoVid) (City Exh. 8, T1, p. 146-147). There was no comparison to other areas (T1, 140-141). Witness also testified that calls for service, not only criminal activity but any call for service that is that type of activity that would require a police response (such as loud noises and loitering) in the Wells Corridor are high (T1, p. 111, 131, 168-169, 173), compared to other areas in the 18th District with a lot of them occurring during the hours

of operations for hospitality and late night and during those times there are a lot of thefts. He noted that in the 18th District, of most concern is the entertainment corridor along Hubbard Street. He testified that in his experience large groups drinking alcohol exacerbates the problems and that the number of calls for the Wells Corridor is affected by the number of taverns. He was also aware that a couple of the entertainment establishments on that stretch are world renown and that there are also restaurants in addition to the taverns (T1, p. 122-139). Witness agreed that the area, a part of the Old Town Neighborhood is generally one of the safest areas in the City and that service calls or police reports don't necessarily end in arrest and/or conviction and that he could not determine which, if any, were related to violations of liquor laws or alcohol-related other than the two listed on crime statistics in City Exh. 8B without looking at the specific reports (T1, 141-144). Witness also clarified that the number of calls for service could be things like more than one person calling to report an incident, crank calls, malfunctioning alarms, or hang ups (T1, 149-152). Witness also testified that where his reports list "alternate response" it means that those are things that don't require an immediate response and don't drain police resources (T1, p. 154-155, 168-169).

Witness was familiar with the Special Services Area ("SSA") affiliated with the Old Town Merchants Association which provides for sidewalk and street cleanup, private security and recognized it as an asset to policing the area, although it has no arrest authority, so the police still have to be called in the case of a crime or disturbance and the Wells Street Corridor which does not have a dedicated foot patrol. Witness did not review the Application or Applicant's criminal background check, which he testified was "done prior to my arrival." He did not meet Applicant's owner or speak to the attorney who filed the Application because he said he never had the opportunity prior to the case going to hearing and Applicant did not contact him, but if Applicant was granted a license, he would meet with them (T1, p. 165-167). Nor did he speak to his

predecessor Police Commander regarding the Application except to notify him that he had to appear for this proceeding. Nor did he send his objections letters to Applicant. If Applicant had been more specific as to how it planned to prevent loitering (which is not against the law absent criminal intent and limited as to what a licensee can do about people who loiter outside of calling 911 (T1, p. 163-164)), increased the number of security guards, eliminate bottle service and satisfied all the points listed on the Police Commander's last letter of objection, Witness testified, "I think it would have helped in me looking at their plan of action and approving it, not necessarily approving the tavern license." (T1, p. 161). Although he had never been inside the premises, from the photos he saw it appeared to be a "fairly intimate floor plan" (T1, p. 162). Witness disagreed that three security personnel for an establishment of that size was a significant proposal by Applicant, and iterated he would rather see security working in pairs, and additionally know what roles they are filling, whether they are armed, who the security company is, how they would be deployed in the event of loitering, entering, exiting, closing "and things of that nature." (T1, p. 114-119, 162-163). Witness testified that large groups gathering are always a concern, especially late at night and when alcohol is involved because of the possibility of disturbances, altercations and violence including gun violence against individuals legally standing on the public way by a tavern. Witness gave an example of said gun violence in the 18th District. (T1, p. 155-173).

Testimony of Brian Hopkins, in relevant summary (T2, p. 9-92)

Witness identified himself as the 2nd Ward Alderman which includes the premises and Wells Street Corridor as of May, 2023 and a 22-year resident and frequent private citizen patron of hospitality establishments in that area. He described the area as a majority of mixed use buildings including some high rises and townhouses which he did not think exceeded 500 residences in total, with the streets that connect to Wells being residential. He agreed it was one

of the safest neighborhoods in the City. (T2, p. 9, 14-16, 43, 48-49, 63-64, 79-80). It is known to him as a hospitality district with some world renown venues (T2, p. 62-63). He acknowledged that residents parking in the garages and taking rideshares to and from residences add to the traffic and noise on Wells (T2, p. 44). He is familiar with and objects to the tavern license application at issue (T2, p. 10, 30). He sent objection letters to the LLCC (September 1st, 2023 shortly after the August 24th, 2023 community meeting and on October 17th, 2023 after reviewing the revised Plan of Operation) and made LLCC and the Police Commander aware of his objections during a phone conversation (T2, p. 28, 70-73), and at some point also requested the Police Commander make an independent professional determination as to whether the District had the resources that would allow for another liquor license (T2, p. 62). Remapping of wards occurs every 10 years (T2, p. 48). The Alderman did not speak to the 27th Ward Alderman where this premises was formerly mapped but was aware that the former Police Commander for the 18th District did not object to this Application (T2, p. 50). The Alderman testified that when a premises changes wards it is common practice for the former Alderman not to interject any further into ongoing matters such as liquor license applications (T2, p. 87-88). He testified that there was overwhelming community opposition based on input solicited by the ward office and the Old Town Merchants Association (T2, p. 11, 21-22). He described a “high volume of complaints” on a regular basis are received by his office, particularly regarding crowds, noise, fights and disorderly behavior which may or may not have also been called into 911 by those people (T2, p. 18). He was not familiar with the first round of notices that went to residents in 2021, but in the second round of notices that went out, Witness testified that a large number of residents disputed receiving them when asked if he had reason to believe the notices were not sent. He did not dispute postings in the newspaper or on the building. (T2, p. 51-53, 57-58). He was aware Applicant had passed inspections as of August 17,

2023 (T2, p. 57). Alderman answered in the affirmative when asked whether all things being equal after passing zoning and physical inspections, Applicant should receive their license (T2, p. 57). He described a community virtual meeting held August 24, 2023 in conjunction with the Old Town Merchants Association which Applicant attended to present their planned business operations to about 100 community people, after which the Alderman opined Applicant's owner lacked experience in the hospitality industry particularly with serving alcohol until two or three a.m. and that he was expecting in that meeting that Applicant would resolve concerns about noise, litter, traffic, outdoor lines, fights and unruly behavior that might require 911 calls which is important to be able to address in the Wells Corridor which has 30 liquor-licensed establishments including taverns and restaurants that serve alcohol that primarily become bars later at night (T2, p. 11-14, 22-24, 30-31). Witness testified that Applicant did not present any details about management of outdoor crowds, people stepping outside and coming back in or people waiting in line to go in (T2, p. 24). There was no plan for parking or valet service, or even whether they were planning to use a valet or not (T2, p. 24). Alderman testified that while Applicant clarified they were not seeking a late hour liquor license, it wasn't clear what days it was planned to be open or what the hours would be (T2, p. 24-25, 31). It appeared to the Witness that there was a general lack of experience managing a tavern (T2, p. 25, 30-31). Witness testified that he reviewed the Plan of Operation and it did not address the concerns of the community explaining it had little or no detail about outdoor crowd management, nothing regarding noise mitigation (which is a top complaint from residents); nothing regarding traffic and parking; and no waste management details for how many and where dumpsters will be located and what hours are planned for waste pick up (which also adds to noise with "clanging cans" and "backup alarms") (T2, p. 27, 31-32).

The Alderman described that stretch of Wells on the weekend evenings as being “very crowded,” frequent traffic lane obstructions, particularly from rideshare vehicles and “crowds spilling out onto the sidewalk” and onto the street because the sidewalk is narrower where a with furniture that is left out and chained. There’s also a bike lane in each direction with bicyclists navigating through pedestrians and bar patrons that spill out onto the street. All of this makes it crowded, difficult to navigate and causes inconvenience to residents. These conditions are not exclusive to summer months but tend to increase in summer. Witness explained that there are hospitality meetings in which he and his office meet with the establishment operators to apprise them of complaints and problems. (T2, p. 16-19.)

In October 2023, a moratorium ordinance passed unanimously prohibiting the issuance of new liquor licenses on the stretch of Wells where the Applicant’s premises is located. The Alderman explained his reasons for introducing the moratorium further: he felt that section of Wells is at maximum capacity for handling the effects of liquor establishments such as attracting large crowds that create a burden to law enforcement in responding to calls and overnight noise . He testified that it was not passed specifically to prevent this Applicant from obtaining a liquor license, but rather because the area is saturated with liquor licenses and is at a tipping point in its capacity to absorb additional liquor licenses. He is looking to add moratoriums to other geographic boundaries with the ward. (T2, p. 19-20, 28, 45-47, 67).

Over objection Alderman testified he believed that a tavern liquor license at this location would have a detrimental impact on the quality of life for the residents he represents because there was no adequate plan presented for the concerns he stated throughout his testimony (T2, p 28). He further described some of the nighttime noise problems that occur on Wells Street Corridor:

hundreds of people outside talking loudly, shouting and screaming; horns honking; vehicle engines that are loud and revving (T2, p. 30).

The Alderman acknowledged that the law does not require a licensee to have prior hospitality experience, but said “it speaks to the Applicant’s ability to inspire confidence in the neighborhood that they can live up to promises they might make to the neighborhood” (T2, p. 32-33). It also doesn’t speak to Applicant’s veracity, he testified, in that promises can be made in earnest but if the efforts fall short, the resulting effects on the neighborhood are the same whether the promises and efforts were made in earnest or not (T2, p. 33-34). Witness testified it was his experience that the fire department had concerns with people cueing in a gangway to get into an establishment, so that even though Applicant’s entrance to the premises was through a door down a gangway, it may not be okay for the patrons to line up there in order to prevent a cue on the public way (T2, p. 36). The Alderman did not dispute that the capacity for the basement premises was 99 and that the location had housed taverns for 60 years but did not recall seeing patrons cueing up in the gangway in the 22 years he has lived in that area (T2, p. 37, 42). In his experience, the Alderman testified that most of the noise complaints are not coming from what is going on inside an establishment, but rather when patrons are entering, exiting and standing on the public way, with the exception that establishments with glass doors sometimes generate noise complaints (T2, p. 37-38). The Alderman explained in his experience a variety of ways in which liquor-licensed establishments can address noise problems (T2, p. 38-40). He was not surprised that other establishments in the Wells Corridor offered language in their Plans of Operation similar to what was offered by Applicant at the times they applied, but that for this Application it was not sufficient because conditions have changed and there’s more disorderly conduct, and when conditions change so too should proposed Plans of Operation (T2, p. 41, 83-85, 91-92). Alderman testified there

were many larger liquor license establishments in that area and that he has occasionally requested they revise their Plans of Operation to adjust to current conditions (T2, p. 42, 92).

As to a letter the Alderman sent as an email to the residents, he indicated in bold that the prior Alderman had tentatively approved this Application to emphasize that with the new Ward map, there was a new Alderman and that he was looking for community input (T2, p. 56-57). He testified it was fair to say that when it was sent, he was opposed to the issuance of the license and that the results of the accompanying survey had no bearing on his opinion that the area was at maximum capacity for liquor establishments but if the Applicant were able to address community concerns and change the community's minds, then potentially that could change his opinion (T2, p. 64-65). However, there were still some issues in the area that were out of Applicant's control - such as the decrease in patrol officers from 500 to 200 in that area, that likely would keep him in opposition to the Application (T2, p. 67, 81). The letter indicated his understanding that Applicant had passed its inspections, and the zoning review showed the proposed use of the premises was lawful as of August 17, 2023, and when asked based on that whether Applicant should have been able to get a liquor license, all things being equal, the Alderman replied in the affirmative (T2, p. 57). In his letter the Alderman wrote that he was "skeptical of the veracity" of the claim that the notices were sent in 2021 which he did to acknowledge that members of the community told him they did not receive notices and that he was not in a position to make the determination of whether the process of notice was followed in that regard (T2, p. 58-59). At the request of Witness, a second notice was sent by BACP and he said it would surprise him if only one letter of objection was sent to BACP in response to the second notice, adding further that he didn't rely on BACP to report back to him the sentiment of the community, because he feels it is the Alderman's role to work directly with the community and that complaints were coming directly to him and maybe not

to BACP (T2, p. 59-61). Alderman is aware that issuance of a liquor license ultimately rests with the LLCC (T2, p. 61) and was not aware whether his office did or did not share the results of a community survey with BACP/LLCC (T2, p. 68-69). Presently he is predisposed to opposing any additional liquor license applications in that area, but that could change with community input (T2, p. 67). He did not recall any piece of correspondence from a resident in support of the Application (T2, p. 80). He did not know whether any businesses in the area supported the Application, but he knew of one that did not (T2, p. 81). His office did not do traffic or noise or other formal studies to see the impact of the proposed license, nor did he know whether there's been a decrease in liquor licenses overall for that area (T2, p. 68-69).

The Alderman said he was not aware of any requests by Applicant to meet with him personally, but that there was some dialogue and correspondence with the ward office, and if one was made to his Staff Assistant, it generally would have been given to the Alderman. He did not communicate his objections directly to Applicant (T2, p. 70-73).

Overall, the Alderman's objections centered around traffic, parking, noise, litter, loitering, lines, public consumption of drugs and alcohol and disorderly conduct (some of which could be criminal, not all of which are reported to the police or 9-1-1). Over objection Witness spoke of what he considered to be "disorderly conduct" on Wells Street as: large numbers of people in unorganized crowds on the sidewalk and streets which creates noise by voice, breaking glass bottles, revving of engines, honking horns and obstructing traffic. He believes these things are directly related to the liquor-licensed establishments because the complaints are made primarily when they are the only businesses open and generally after Second City's last show ends which is around 11:00 p.m. (T2, p. 74-78).

The Alderman testified that he thought regulating a large crowd of people who are drinking alcohol is difficult, and what was submitted by Applicant wasn't a plan to handle that because there was no detail, and that Applicant was told by the community very clearly the expectations and nothing was written specific to those concerns. (T2, p. 79, 83-86). He agreed that there is a certain arbitrary nature to aldermanic prerogative, explaining that is inherent in the system where there is overlap between legislative and ministerial functions of government and from one alderman to the next in that they don't all work in the same way, and that what the prior Alderman did several years prior may not be what the current Alderman will do (T2, p. 90-91).

Testimony of Bryan Cagan, in relevant summary (T2, p. 93-113)

Witness identified himself as a resident living with his spouse, three-year-old and infant on Wells Street about one-eighth to a quarter of a block away from the premises at issue. He has lived there since 2019 and his spouse has lived in that area since 2012 or 2013. He agreed the neighborhood was mix use with a lot of residences. He testified to the overall conditions in the neighborhood consistent with the Alderman and noted that since he has lived on Wells Street it has become busier with patrons, rideshares, cars honking, loud music, yelling, screaming, fights and altercations, broken glass, trash, vomit, bodily fluids, clothing, loitering and traffic congestion. And, although police presence when it is there is reassuring, when the police are present at night their blue lights from the patrol car flash in his windows. He also noted that the above problems increase most notably Thursday through Saturday and in summer. It makes the area less desirable to live in. He testified that the type of liquor-licensed businesses there seems to have changed from being more food focused to being more alcohol focused, and so he associates that change with the increase in problems. Witness is concerned the opening of another tavern will exacerbate the problems. He voiced his support for more businesses that help the neighborhood thrive and

grow but does not see how another tavern helps to that end. He did not think Applicant's answers at the community meeting addressed the concerns or demonstrated an ability to handle problems as they arise enough to give the community a significant comfort level with the business. After the meeting it cemented his opposition to the issuance of a tavern license. Both Witness and his wife wrote objection letters to BACP/LLCC in December 2021, and then he again in June 2023.

On cross examination, when asked if it was fair to say Witness knew what he was getting into when he moved there, Witness said he knew the businesses were there but when he moved in the type of activity occurring from them was very different from what he now sees. When asked if he attributed the difference being CoVid, Witness said he couldn't surmise but that it's busier and more crowded now than pre-CoVid. He agreed that the residents in the larger buildings drive and park in their parking garages on Wells and that he himself drives and uses rideshares.

Witness further testified that he and his spouse have been together since 2017, and he is familiar with that area since 2017 and that the neighborhood has changed commercially, drawing more people especially in the evenings and afternoons to the bars. He explained how it used to feel more residential when they could walk down Wells with a stroller, but now in order to do that "we're combatting patrons or people stumbling on the sidewalk or things of that nature." Witness testified he understands there's a constant give and take in a mixed-use area, but he's "definitely seen an uptick in activity that definitely does not make it a great place to call home."

(T2, p. 93-113).

Testimony of Robin Sladen, in relevant summary (T2, p. 113-132)

Witness identified herself as a 25-year resident of the area at issue and owner of a condominium perpendicular to Wells Street about 300 feet from the premises at issue here. Her testimony was consistent with Witness Cagan and the Alderman as to conditions on Wells Street.

She considers it a more residential than commercial neighborhood. She has seen the commercial area go from retail businesses like bookstores, antique shops and lots of restaurants to more liquor-related businesses in the last 10 years. She is concerned that there is a high concentration of bars in the area, counting 25 liquor-related establishments within four blocks of her home. She was also concerned about this Applicant in particular after the August 24th, 2023 online community meeting because it seemed they were completely inexperienced as to operating a tavern and were not able to answer questions. She gave a particular example of how the Applicant had told those in attendance they wanted to have a classy venue and attract executives that would bring clients, but that they did not explain how they could do that. Witness also called their PowerPoint presentation "rudimentary" and not what she would have expected for them to present to make their case to the community. After the meeting Witness was strongly opposed to a tavern license being issued for that location. She did not know how many people dropped off the call when they learned it would not be a late hour tavern license.

Generally, Witness testified that the activity in the neighborhood in the last 10 years has changed because the bars have gotten so popular, and the amount of drinking (alcohol) is more than a couple of drinks with dinner and appears to be for the purpose of getting drunk. People use her street as a way in and out of Wells Street and especially on weekends people are constantly passing her building, noisy, yelling and screaming, and there's a lot of public urination, defecation and vomiting. She has witnessed a couple having sex in her gangway at night, drug use and drug sales. She testified, it is disconcerting and a little frightening "to have that going on at your front door" and having to clean up her gangway after people use it as a toilet, which she has done many times. She avoids walking Well Street late night because there are so many "drunks" and large groups of young men that she feels she's running a gauntlet to get by. She is from Chicago and

not afraid to be outside, and she considers herself a pretty savvy person. Walking around during the day it's a "nice, beautiful, quiet neighborhood," she continued, but at night, especially weekends it turns into crowds and drunkenness. She has called the police when she's seen people "shooting up drugs in front of her building with a syringe," but when she calls the police the people are gone by the time they get there.

Witness testified her home is on a cul-de-sac and cars will pull up and have an impromptu party at the park there late at night. She's called the police for that activity as well, but they don't necessarily come or by the time they do come the people have moved on. She has learned from other neighbors there have been instances of vandalism, rock throwing and windows being broken. She knows there is an SSA, but she thought there's so much going on that they're ability to control crowds is poor. She testified she would be shocked to learn that crime had dramatically decreased in the last five years for that area.

Witness testified adding another tavern would be "piling on to the problems that we already have." While she opposes this Applicant for a tavern license, she would not be against one for a business that was more food-oriented even if they happened to serve alcohol. She wrote a letter of objection to BACP/LLCC.

(T2, p. 113-132).

Applicant's Case in Chief

Testimony of Don Klugman, in relevant summary (T2, p. 134-162)

The witness identified himself as owner of the premises at issue since 1984 and resident in that building since 1963. He characterized his profession as film and video producer, writer and director working at all hours of days and nights by himself or with others upstairs from the proposed tavern space. He is also a Commissioner for the SSA which he described as an arm of the Old Town Chamber of Commerce (herein "the Chamber"), is familiar with the process for

liquor licenses and feels the SSA has done a good job for the last nine or 10 years he guessed they'd been there when the area became noisier and there were more boisterous young people. He testified it is not less noisy now then it was then, and also testified that there's been little change in ambience, and it is a nice place to bring the family on Saturdays or Sundays or go to a restaurant or bar on the weekend. He testified that when he first moved to the location it was an entertainment area with theatres and an organized crime presence. Witness testified there are more restaurants and bars in the area over the time he's lived there, though not really more of an increase in the number of spaces to house those businesses. He testified there are about the same number of liquor licenses over the years which he judges by membership in the Chamber and SSA. He testified he has always felt safe there. In his time there the basement has always housed taverns and with the exception on one bar that created a lot of noise in the mid '80s for which he terminated their lease after several years because they were disrupting his own business operations, the taverns there have been ten-year or more tenants, none having had their license revoked. He described how he prefers to lease to family-owned businesses and the last tenant, a family-owned business, had to leave because of CoVid restrictions on their business. He described the basement premises as intimate and explained the lease was written so that they would operate in a "quiet and sedate way." There is no sign or canopy on the exterior of the premises so as not to encourage street traffic. Witness testified he cried when the last tenant left because they had been good tenants and neighbors and that he then searched for a similar group to replace them and was approached by four groups of people, three of which he felt threatened by because they reminded him of organized crime from earlier decades, and so he rejected all but the Applicant, describing Applicant as a family. Witness explained he would be shamed by neighbors, SSA and the Chamber and he did not want to look like a bad guy for leasing to tenants unlike those he has selected in the past. He

testified he keeps the rents a bit low and considers the basement occupant like any of the other residents in his building. Witness described Applicant's renovations as creating a lounge atmosphere with sofas and not bar stools, more like a parlor than a bar, which he thought would attract people that he would have in his own home. He described the entrance as a door in the gangway that blends into the wall of the building, which is an easement he shares with his neighbor, and which has a locked gate at the back. Witness also noted that there was a fire in the building recently, and the fire department had to break a front window of the nail salon that is there which is why photos in the Application file show a broken window.

Witness testified he was also at the online community meeting August 24th, 2023. He explained Applicant thought they could apply for a late hour license which attracted a lot of people to the meeting, but that he would not approve of that for the lease, and he thought when they found out it was not a late hour application "that is why a lot of people left the meeting."

As to the current conditions on Wells Street, Witness testified that the members of the Chamber and SSA are concerned with young people there in that they seem louder and more boisterous. He explained that if Applicant exacerbated those concerns it would be breaking the terms of its lease which he could terminate if there was a violation of quiet operation of the business. He also testified Applicant had a dumpster before being asked to do so, and that he has never had issues with any of the taverns in that space as to garbage pickup.

(T2, p. 134-162).

Testimony of Angela Calais, in relevant summary (T2, p. 162-211)

Witness identified herself as the owner of the Applicant applying for the license for what she described as "a lounge" in a process that has been ongoing since November 2020, with the renovation of the premises started after signing the lease in November 2021 (T2, p. 164, 166-167).

She hired an architect and general contractor. She also hired an attorney to help with the liquor license. (T2, p. 169). Witness testified she did not know what a Conditional Approval was and could not answer whether she sought one prior to renovations (T2, p. 189). There was a delay for building permits to process and work that needed to be done to the space by the landlord (T2, p. 168-169). She testified that CoVid caused delays because the workers kept getting sick, and from December 2022 through October 2023 she was traveling to and from Moldova to take care of her ailing father, relying on her son during this period for things that related to Applicant. Witness testified they were ready for inspection in February 2023. (T2, p. 175-176). She testified she talked to BACP business consultant, Witness Kinniper many times throughout the process and it was he who told her that the premises had to be 99 percent ready to open and alcohol had to be brought in for inspections to occur (T2, p. 176-177). Later, on cross examination she testified Witness Kinniper did NOT tell her she had to have alcohol on the premises for inspection (T2, p. 195). She testified that for the inspections all the furniture was in place, and that per instructions from BACP they had pest control, garbage removal, dishwasher, refrigerators and all appliances installed (T2, p. 178). After passing those inspections, sometime in mid-April, she testified that BACP business consultant, Witness Kinniper, told her it would probably take two weeks to get the license (T2, p. 179-180). Witness testified that they were ready to open up in May 2023 (T2, p. 178), but when the license did not issue after a couple of weeks, she called Witness Kinniper and was told the Application was with the aldermanic ward office for review. At his suggestion, Witness testified she called the Alderman's office and left multiple messages until the individual identified by the Alderman in his testimony as the Staff Assistant returned her call a couple of days later in which she said she asked for a meeting with the Alderman to discuss the Application and why it was taking so long. She testified she was told by Witness Kinniper to file an intake form

to get a meeting with the Alderman, which was filed in June 2023. She did not have an in-person meeting with the Alderman but was asked to present and talk about the business and its plans in an online community meeting. (T2, p. 180-183). That meeting would include the Alderman, landlord and his attorney and neighbors of the premises. Applicant did attend. (T2, p. 184) testified to by other witnesses in this case. Witness testified that she gave a speech, the Alderman spoke and then a lot of other people spoke -- some opposed the Application, and some were happy that Applicant wanted to bring something new to the area, not just another bar or restaurant. For some of those who opposed the Application, Witness testified she heard them give reasons the same as other Witnesses in this proceeding gave -- like noise in the streets and drunk people -- and they seemed more interested in what was going to happen outside the club than in it, and that no one attributed those outside problems to her business. (T. 189-190). She testified they addressed those issues in the Plan of Operation and that they would have three "bodyguards" and that it was going to be a small club, like a small family restaurant in the suburbs, but she did not remember anyone asking for more specifics. She said they planned to be a "high end lounge" with rules and a dress code because they do not want t-shirts and gym shoes, she guessed because it would make it more respectable, but it would not be private, it would still be open to the public. (T2, p. 190-191, 196-197). She testified that after the meeting she contacted the Alderman's office again to try to meet with him because she felt the meeting attendees did not understand the business and environment they wanted to have for the location. She did not get a meeting. Instead she received a denial letter from LLCC in September 2023 allowing Applicant to file another Plan of Operation which was filed by her attorney. She testified she emailed the Alderman for a meeting and attached the Plan of Operation but got no response. From her perspective, the Plan of Operation was created without anyone from the Police Department, BACP or Alderman's office explaining their

concerns. A final denial letter was received in October 2023 after submission of the Plan of Operation. Witness testified that if she knew the provisions the police, Alderman and LLCC wanted in the Plan of Operation she would have, and would still, incorporate those provisions. (T2, p. 185-188). She understood the Plan of Operation to be an explanation of the basic points and not requiring all the specifics of how they would run the business. She testified that as a business owner she would follow all the rules and accommodate what was asked of her to address concerns of loitering, noise and drunkenness to make sure it is not attributable to her club because she wants to protect her business. (T2, p. 192-194). Witness testified the second Plan of Operation provided for three security personnel to cover inside and outside the 2000 square-foot premises based on the recommendation of someone they wanted to hire as General Manager who has managed restaurants; installation of security cameras and outdoor lighting because the entrance in the gangway is dark; calling 9-1-1 to report illegal activity and that they "should" train staff to do the same and maintain a log of incidents; picking up trash on a regular basis which she meant to include the club and the sidewalk and back alley; working with the Alderman, City and community groups to avoid issues with the operation of the business; enforceable dress code; and BASSET¹ training of all employees. Witness testified that where the Plan of Operation said, "Licensee shall take proactive steps to prevent loitering inside and outside," that her proactive steps were to have security at the front door, calming down noisy patrons and calling 9-1-1. She understands that it is already a legal requirement for a licensee to call 9-1-1. When asked about the section on Restricted Sales, Witness said she did not know how to answer why it was included because her lawyer put that in the Plan of Operation, and she didn't know. When asked what "adequate lighting" meant, Witness answered that it's dark and there needs to be more light, but she didn't

¹ State of Illinois Beverage Alcohol Sellers and Servers Education and Training

know the number of lights and that between Applicant and the landlord they would decide how much. She agreed "adequate" does not have an objective standard. She testified that she thought the CAPS² meetings were like business meetings two-to-three times a year. Applicant explained that while the security cameras themselves keep video recordings for 72 hours, the business' computer hard drive would retain footage for a week per the Plan of Operation. She then testified that for security she probably would not delete after seven days. (T2, p. 200-210). Witness testified she did not know what a Conditional Approval was and could not answer whether she sought one prior to renovations (T2, p. 189).

Throughout her testimony she referred to "we," which she testified meant her and her son. She described her son's involvement in the business as helping with almost everything, including construction and that he is guiding her, and they are doing the project together. (T2, p. 167-168). Witness offered that as far as attracting clientele, she would leave it to him because he has many friends and is more of an entertainer, that those many friends would be at the business when it opened and that she did not want to say how else they would attract patrons because she felt stuck in the process, and they stopped making plans. (T2, p. 191-192). Witness acknowledged that she has not previously worked in the United States in hospitality or food service (now a U.S. citizen, she emigrated from Moldova, as did her son) (T2, p. 165-166). She testified that when she was 13 her father managed restaurants and she grew up in that environment, but that they planned to hire a General Manager to run the business on the premises and do further planning for controlling outside problems. She said she and her son came up with the idea to open a place with a nice environment where people felt safe to go, not a place to go get drunk and make problems in public, and that they chose the premises at issue because it was in a well-established area with a lot of

² Chicago Alternative Policing Strategies

successful restaurants. (T2, p. 170-171, 193). She testified that she passed the criminal history and source of funding requirements (T2, p. 172-173).

As to the Applicant's company name, "N & K Entertainment," Witness testified that the "N" was for the first initial of her son's last name (not an owner), and "K" was the first initial of the spelling of her last name in Moldova (which would be a backwards "K"), and the "Entertainment" was just in the name and they did not plan to have live entertainment in the lounge. (T2, p. 208-209)

(T2, p. 162-211).

Closing Arguments
City (T2, p. 213-317)

City argued it has broad discretion to deny a liquor license application if its issuance would tend to create a law enforcement problem or have a deleterious impact on the health, safety, or welfare of the community and that City acted within its authority when it denied this Application on those bases. City argued that patrons of the area's substantial number of liquor-licensed establishments contribute to service calls and criminal activity that create law enforcement problems and strain limited police resources as testified to by the District Police Commander and Alderman. It further argued that the residents and their properties were adversely affected by having to clean up bodily fluids from patrons of liquor establishments, and noted drunken behavior, noise, litter, and vehicular congestion on that stretch of Wells. City argued the Illinois Appellate Court upheld the denial of a liquor license when the evidence demonstrated the likelihood of an increased demand for police services where law enforcement resources were limited; that it recognized a deleterious impact can be found when there is evidence of already existing problems that could be exacerbated by adding another liquor license to the area. (*Move N Pick Convenience, Inc. v. Emanuel*, 30 N.E.3d 661 (Ill. App. 2015)). City also argued Applicant

did not demonstrate the preparedness necessary to control for these factors in the community meeting, or when given the opportunity to submit a second Plan of Operation after being made aware of the concerns at the community meeting Applicant did not thoroughly address the issues or present measurable standards for future assessment of whether the Plan was being followed. City argued the preponderance of evidence shows the denial should be upheld.

Applicant

Applicant argued that while LLCC has broad discretion, it also cannot arbitrarily deny a liquor license, citing a liquor pricing case. (*Ted Sharpenter, Inc. v. Illinois Liquor Control Com'n*, 499 N.E.2d 669 (Ill. App. 1986)). Applicant argued the process changed during the Application after Applicant had passed all the inspections and was waiting for the license to issue in that the boundaries of the ward in which the premises lies was remapped from one ward to another. Applicant expected the license to issue around the same time the ward maps were redrawn. Applicant argued the new Alderman, afforded tremendous authority, had no legal basis for what he did, by his own words as reflected in the record, and that what he did was outside the law -- that he started the process over and that he was not obligated to honor what the previous alderman had done or adhere to the process as it had already been completed. Applicant argued it is nowhere in the City ordinances that notices can be reissued to residents and urged LAC to consider MCC 4-60-040 (e). Applicant argued that the Alderman agreed he acted arbitrarily. Applicant described the Alderman's conduct as not being satisfied with the results, deciding to create different results, taking it upon himself to engage in a one-man effort to undo what had already been done, arguing the Alderman did not take the time to talk to the prior alderman or prior police commander who did not object to the Application, did not have a meeting with Applicant even though Applicant desperately wanted the meeting, and that if the Alderman were so concerned with the inadequacies of the Plan of Operation he could have sat down with Applicant and gone through it making

changes, many of which were suggested by City witnesses during the course of this proceeding -- Applicant making clear that they would agree to do whatever was reasonable to accommodate the Alderman's and Police Commander's concerns. Applicant argued the ordinance does not provide for second notices to be sent to registered voters in the area, and that the ordinance provides for sending of postcards to those individuals within five days of the application and all noticing provisions were properly done in 2021. It argued that just because the ward map was redrawn, it does not trigger a do-over for notices because it does not state that in the ordinance. Applicant argued that of 473 mailed notices, only six letters were received in 2021 and an additional one after the second mailing in 2023. Given the thousands of residents in the area, Applicant argued that six or seven letters of objections does not show deleterious impact, and that the Alderman's email to the community ahead of the community meeting used inflammatory language, that his mind was already made up prior to the meeting and that the email acknowledged Applicant had done all it needed to do to be issued a license. Applicant characterized the process as having "sailed through" through it. Applicant argued City's bases for denying the license relied heavily on the testimony of the Alderman that there was a deleterious impact, highlighting words and phrases in his testimony as to the neighborhood being saturated with taverns, at a tipping point and that the neighborhood could not stand one more hospitality venue even though all witnesses acknowledged the area is an entertainment district with taverns at the proposed location for 60 years; and relied heavily on the testimony of the Police Commander that there is a lack of resources even though he testified crime had gone down in the area by what Applicant asserted was 26 percent since 2019. It was argued that the bases were not backed up by substantial evidence and that City did not prove by a preponderance of the evidence that the owner will tend to create any form of undue concentration of licenses, have a deleterious impact or that she, herself, has acted

in any unlawful way. Applicant argued that the area being an entertainment district is naturally why Applicant wanted to be there. Applicant argued that it was not credible that by adding this small venue with a capacity of 99 occupants the affluent neighborhood would turn into an urban hellhole and that even if it were credible, a moratorium ordinance could be passed to block future applications, which is what happened after this Application was filed. Applicant argued that it was unfair to stop this license from issuing, that the rules of the process kept changing, and they did their best to navigate the process, spending hundreds of thousands of dollars doing so. Applicant argued that while caselaw supports the proposition that "[t]he business of selling alcohol at retail, when not done properly, is a business fraught with danger to the community," and raises local problems for public, health, safety and morals of the community, the exercise of control by LLCC must not be abused and that applications are entitled to fair treatment and good cause must be shown before denying the license. It was asserted Applicant is qualified to hold a license and surpassed every bar in that regard, and that throughout the process Applicant's owner was put on trial regarding her experience and whether she is the right kind of person to hold a license, and that it is not a valid concern as to whether Applicant will succeed in the business in order to issue the license. Applicant ended with describing the process as a nightmare, and that Applicant is entitled to the tavern license.

City Rebuttal

In rebuttal City argued that any nightmare experienced by Applicant's owner was not attributable to the City, and that Applicant could have pursued a conditional license before starting renovations, but she chose to not do that. Over the course of the three years from the first time Applicant applied for the license at the location, the neighborhood changed, and a new Alderman was given jurisdiction. City argued that just because the new Alderman had a different opinion than the former alderman, that is not the standard that constitutes "arbitrary," and pointed out all

the Alderman did to elicit feedback from the community, and that he considered that feedback including the constant complaints he received, and then gave his opinion based on that to the LLCC, who in turn evaluated that opinion in full context, and then issued the two legal bases for denial. City also pointed out that the Alderman testified he was never aware of any requests for in-person meetings with him that Applicant may have made, asking that Applicant's assertions to the contrary not be given any weight, concluding that the community has strongly risen up, gotten a moratorium on new licenses and opposes this license, iterating the denial should be upheld.

ANALYSIS

The standard of review is *de novo* for denials of liquor licenses (235 ILCS 5/7-9).

For context and completeness, it is noted that a review of the Application file in evidence showed Applicant filed for licensing in 2020 at the same location for a late hour tavern license for a place named, "Hush." We note this for context as "Hush" appears in other places in the file after the 2021 application submission for a regular hour tavern license for "Cache."

A moratorium for the area which encompasses the premises for this Application was passed in October 2023 prohibiting further issuance of new tavern licenses. Pursuant to the Municipal Code of the City of Chicago, the issuance of a liquor license **is not prohibited** by a moratorium where there the application is pending prior to the effective date of the moratorium³, which describes the Application at issue in this matter. However, it also does not **guarantee** that the license will issue simply because it is pending before the moratorium. Therefore, issuance of a tavern license to Applicant is not prohibited by moratorium, but it also is not guaranteed. That

³ 4-60-021 (c) "No ordinance to prohibit the issuance of additional liquor licenses in a specified area may... (3) prohibit the issuance of additional licenses within the specified area to applicants whose applications were pending prior to the passage of the ordinance..."

said, there is an inference drawn that the moratorium is indicative of the opposition of area voters generally, to additional taverns in that area given they elected the Alderman who introduced the moratorium ordinance which passed unanimously by the elected City Council, and there is no evidence to suggest this was done in opposition to the sentiment of the community, generally.

There were six community letters of objection after the first set of notices in 2021 and one additional after the second set of notices in 2023. There were objections made at and after the community meeting in forms other than letters of objection. The exact number of letters is not determinative of actual objections, as it is possible that not all those who object may have sent a letter, given the additional efforts made by the Alderman in soliciting community input and the response. Had the community supported the Application, it could have changed the Alderman's position. There is no evidence of such support.

While this Commission did not give weight to numbers presented from a survey conducted in the ward that was not shared with the parties prior to this proceeding, the LAC does find persuasive the letters of objection and the credible testimony from community members and the elected Alderman, who testified not only in his official capacity but as a 20-plus-year patron of liquor-licensed establishments on that area of Wells Street. So too is persuasive the credible testimony and letters of objection from the current Police Commander -- the boots-on-the-ground, so to speak, law enforcement commander in that area. These witnesses have firsthand knowledge of the conditions in the area during the times the only businesses open there are liquor-licensed establishments and the conditions of the area the following day. So, too did the Police Commander speak from experience how additional tavern licenses can adversely impact an area.

While inexperience is not currently a legal basis to deny a tavern liquor license, such inexperience does reflect upon the totality of circumstances and the credibility of Applicant's

owner in testimony as to her understanding of what is required of Applicant under the law, including the Plan of Operation which becomes part of the legal conditions of the liquor license if issued. It is concerning that the Alderman, Police Commander and members of the community all testified Applicant did not adequately address their questions as to how her business would mitigate crime and nuisance attributable to liquor-licensed establishments as they present themselves. Applicant's lack of knowledge and understanding of the crime and nuisance concerns was demonstrated during her testimony when she was unable to explain some of the items on her own Plan of Operation when questioned by the City. No testimony was offered as to her personal knowledge of that area in the evening, late at night or on weekends. Applicant would rely heavily on her son. LAC majority found all of the witnesses credible, however, the owner of the Applicant less so in terms of her testimony as to the operation of the business. She showed a particular lack of personal knowledge in what was proposed in her own Plan of Operation and demonstrated her son, who is not an owner or manager, appears to be the one who is leading the project.

As to the existing conditions in the area, persuasive testimony was offered in detail not only by the Alderman, Police Commander, Business Consultant, and community members, but also by Applicant's witness landlord who has seen the neighborhood change over the years and which he described as an increase in boisterous behavior. A review of the Application file in evidence revealed that while the landlord testified there were no revocations of liquor licenses at 1446 N. Wells, there was an establishment called "Hobos" that was the subject of several violations dating back before and ending in 2012 at that address. So, it hasn't always been roses and sunshine at that location for liquor-licensed establishments.

While reported crimes and services calls have decreased in that area the Police Commander testified that in his opinion and experience those number are still too high and higher than

anywhere in the district except the Hubbard Street entertainment district. LAC gives weight to this testimony based on his experience in law enforcement and commander of a district that covers more than just the Wells Street Corridor.

Applicant was given two opportunities to present an acceptable, measurable Plan of Operation and opportunity for revisions. There was an opportunity to create a Plan after meeting with the community with more specificity to the concerns voiced in that meeting. The LLCC did not have to offer the Applicant an opportunity to create a Plan of Operation, let alone two, nor was it required that BACP, the Alderman, Police Commander or anyone else offer suggestions for revisions. The LLCC could have denied the application outright, but instead chose to give Applicant those multiple opportunities. It appeared that both the interests of the community and the Applicant in setting up its particular business in that community were considered.

While Applicant's assertion that the City caused delays is partially correct, Applicant's own actions or inactions also caused significant delays, and outweigh any delays attributable to the City. There were delays caused by Applicant in correctly filling out requisite paperwork. According to the case file in the City's Exhibits. For instance, a review of the Applicant file in evidence shows erroneous information was given by Applicant to the Department of Buildings about the hours of operation when it filed an Application for Occupancy Capacity in which hours of operation were listed as "10:00 a.m. - 4:00 a.m." (indicating a late hour license). As late as August 20, 2023, Applicant through its attorney indicated Applicant's hours of operation would be "10pm-4am" on the Business Intake Form filed with the Alderman's ward office. Applicant's attorney, still referring to the Applicant's operation as "Hush" on May 8, 2023, asserted that it no longer wanted to apply for a public place of amusement license. There was also erroneous information filed by the owner of the Applicant when she filed the Individual History Form listing

her ex-husband's name as Emil Nichitoi, which is her son's name. It was flagged by BACP and she subsequently filed the Judgment of Dissolution of Marriage, showing her name in divorce proceedings as Angela Nichitoi (introduced at hearing and by identification in the Application file as Angela Calais) and the ex-husband as Oleg Solton. The owner testified she was confused when she filled out the form, but it is a very important piece of information to have gotten wrong on a very straightforward question. The Individual History Form states in the certification she signed that false information could result in denial of a license. Applicant could have been denied a license on this basis, but instead BACP notified the owner and worked with her to allow her to correct the information and file supporting documents.

There were also delays in Applicant requesting inspections according to the Application file and found in an email exchange between Applicant and BACP in which Applicant did not request inspections until March 2, 2023, and which the owner explained at hearing as delays partially due to work the landlord needed to perform on the building subject to building permits. As of May 4, 2023, the premises had not passed the plumbing and electrical inspections. Sometime between May 4 and August 17, 2023, the inspections were passed.

LAC does not find that the Alderman acted arbitrarily, as Applicant argued, and finds that it was a mischaracterization of what the Alderman said. He did not testify that he had acted arbitrarily. He testified that there can be a bit of an arbitrary nature in that 50 aldermen can do things 50 different ways and where legislative intersects with ministerial functions. The Alderman described the process he went through to involve the community. He testified that had the community supported the Application it would have changed his position. The time and effort to involve the community; inviting Applicant to present to the community; the meeting itself; and reviews of the Application and Plans of Operation all indicate that he did not act arbitrarily. The

fact that he and the new District Police Commander objected to the Application in 2023 when their predecessors did not object in 2022 does not mean they acted arbitrarily.

Applicant's owner could have avoided some of the expenditures made pre-license had she applied for conditional approval before significant costs were incurred. Conditional approval is an option made available by the City. She did not avail herself of that option.

Applicant questioned whether the Alderman commissioned formal studies to predict how this Application would affect noise or traffic. Applicant could also have commissioned those studies. So, the lack of formal studies in the process was not persuasive.

Even if LAC did not consider the one objection letter offered as a result of the second noticing, the first set of objection letters and totality of the other evidence presented at hearing is sufficient to show conditions and objections persuasive enough to conclude the area is having law enforcement problems, whether or not reported crimes and other disturbances and calls for service have decreased since 2019 (pre-pandemic). Great detail was given as to the loitering, crowds, littering, noise, public intoxication, public urination, defecation and vomiting attributable to the overall number of liquor license establishments, particularly in the evening and late hours and at places when and where there is alcohol consumption. The type and amount of that conduct described is enough to demonstrate law enforcement concerns and the deleterious impact liquor-licensed businesses are having on the area. The totality of the evidence has demonstrated that the tavern license proposed at this location was reasonably denied by the LLCC on the bases cited.

Caselaw cited by Applicant in *Jacobsen* involved the invalidation of an ordinance passed by a municipality that banned a class of businesses from obtaining liquor licenses. The *Jacobsen* court opined: "The conclusion from the cases is clear: the power of the locality to regulate liquor licensees is limited only by the requirement that it must be for the public good; however, an

ordinance of a local municipality cannot prohibit a person or class from receiving a liquor license for a reason that is not specified in the enabling statute. (See, *Emm v. Sopher*, 23 Ill.2d 376, 178 N.E.2d 289 (1961).)" (*Jacobsen v. State of Ill. Liquor Control Commission*, 423 N.E.2d 531, 534 (Ill. App. 1981)). In this Application, the LLCC issued the denial for bases delineated in the Municipal Code. Cases involving denials on those bases have been upheld by the Illinois Courts.

The *Sharpenter* case cited by Applicant involved disparate pricing by a distributor for different types of retail sales of alcohol. It supports Applicant's position that the licensing agency has broad authority and discretion but cannot act arbitrarily in issuing or denying a license. The *Sharpenter* court also pointed out that where the legislature empowers an administrative agency to perform certain acts, courts are reluctant to interfere with the exercise of those powers or to substitute their discretion unless the agency action is palpably arbitrary, unreasonable or capricious. It also noted that the agency's construction of an ordinance or rule is persuasive, but not binding on the court. *Sharpenter*, at 673. LAC finds that the denial bases were articulated, are found in the ordinances and in this proceeding evidence was presented of what the LLCC relied upon in coming to the decision to deny.

City cited Illinois caselaw that shows Illinois Courts recognize "there is no question that the decision whether a liquor license will have a deleterious impact on the health, safety, and welfare of the surrounding community takes into account the existing safety of the community" and that those existing conditions are also considered when determining whether the license would tend to create a law enforcement problem. *Move N Pick*, at 670. LAC takes existing conditions into consideration when coming to its decision in this proceeding.

The plain language of MCC 4-60-040(h) reads, "there shall be no time limit on review of an application for a late-hour license or for issuance of a license within an area described in

Section 4-60-022." MCC 4-60-022 lists the area at issue here. The plain language does not make exception for review of applications for premises in those areas that were pending as of passage of a moratorium, thus LAC declines to add one sua sponte.

We find by a preponderance of evidence there is an existing problem in that area that will likely be exacerbated by adding the proposed tavern liquor license to the mix and would tend to create a law enforcement problem as well as have a deleterious impact on the health, safety and/or welfare of the community in which the licensed premises is to be located.

CONCLUSION

IT IS THEREFORE DECIDED AND ORDERED that the October 20th, 2023, denial of the application for a tavern license for N&K ENTERTAINMENT, LLC for the premises located at 1446 N. Wells, City of Chicago, County of Cook, State of Illinois is UPHELD, and the license shall not issue.

Laura Parry
Chair

Cynthia Berg
Commissioner

DISSENTING OPINION, by Commissioner Gibbons

After a review of the record the following many points were considered in the dissent:

The application process began in 2020. After meeting most all of the City requirements for a new liquor license, including the approval of the then Alderman, Police Commander, and the many other City departments, Applicant went ahead and spent most of her finances to complete her venue. Part of the city process required surveying the 473 residents living within 250 ft. of the premise. This produced six objections. Because of a ward remap in 2023, a new Alderman was

made responsible for this location. Also, in 2023 a new Police Commander was assigned to this district. Although the City requires only one mailed notice, another was sent out to the same residents producing fewer than 10 objections total. After the new Alderman arrived in 2023, he developed an additional survey with a different outcome (i.e. many more objections). The new Police Commander presented a report to show increased crime on this business strip, but this call report actually showed a decrease in calls after eliminating the non-crime false building alarm calls. One of the main reasons for denial was an unacceptable Plan of Operation. The Plan submitted by Applicant was revised by the City without communicating the changes to her for her response and compliance. A meeting with the Alderman to discuss a Plan was refused -- a real "gotcha" process!

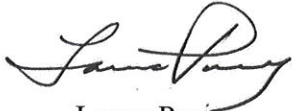
Concerns of deleterious effects on the neighborhood of a liquor license are valid concerns, but they should not be a factor considering the history of this location, housing a basement lounge of less than 2000 square feet since 1963 without any serious violations. Also, this Applicant will not have entertainment as part of her operation. Knowing that the Alderman has lived in this new ward for 22 years, and that he successfully passed a new liquor license freeze in 2023, it is unfair to deny this Applicant a new liquor license. One should not conclude that this unblemished applicant will have a deleterious community effect. With this thought process the City of Chicago and the State of Illinois will not have a future thriving, tax producing hospitality industry.

For the reasons stated above, I respectfully dissent.

Thomas Gibbons
Commissioner

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 18, 2024



Laura Parry
Chair



Thomas Gibbons
Commissioner



Cynthia Berg
Commissioner