

CITY OF CHICAGO
LICENSE APPEAL COMMISSION

Dearborn Restaurant Group, Inc.)	
Paul W. Babcock, President)	
Applicant (Tavern))	
for the premises located at)	Case No. 07 LA 13
650 North Dearborn Street)	
)	
vs.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Scott V. Bruner, Director)	
)	

ORDER

COMMISSIONER KOPPEL'S OPINION

This matter comes before the License Appeal Commission on an appeal from the Mayor's License Commission denying the issuance of a tavern license with food service. When the application was originally filed it had the Police Commander's approval. The Commander later retracted his approval indicating it would cause parking problems and put a strain on his resources. The recently elected Alderman disapproved the application on the issue that it would cause a deleterious impact upon the community. The primary issue was one of parking congestion. It should be noted that this area is properly zoned.

It should be further noted that 600 people were notified and only 11 people testified against the license. Also, the establishment immediately adjacent to the applicant is one of the largest operating taverns in the city. It holds approximately 2000 people.

The applicant is of good character. He has been involved in the business of management and operation of some of the finest taverns in the area. The applicant has spent several hundred thousands of dollars to build this establishment. He presented experts to show that thousands of parking spaces were available and that a valet service would handle the cars.

A real estate expert testified that all the condos that exist in this area have gone up in value without exception. It is clear that as the applicant's urban expert testified this area presents a certain attraction to residents who have chosen to live here. We can only surmise that the individuals who have decided to reside in this area took account the nature of the community and the manner in which it has been developing.

The city is a changing and evolving place. New developments are being created in this area and have changed the ambiance of this neighborhood over a period of years. It is downtown Chicago replete with restaurants, taverns and other entertainment venues.

It seems to this Commissioner that this is an integral part of the city plan which includes a mix of residential and commercial. To exclude this qualified and responsible applicant would be prejudicial considering that this is a predominately entertainment, restaurant and night life area.

When a city is growing, the established area zoning patterns might have to be changed

but notwithstanding this any common sense person would have to recognize the commercial aspects of the area.

To punish the applicant whose clean record will reflect for no legitimate reason that he has been denied a retail liquor license in the city of Chicago is inappropriate. To say that a licensee could contribute to a bad situation is not enough to say it is a deleterious impact on the community. It is the responsibility of law enforcement agencies to control this problem. Again, this place is properly zoned the police originally approved the application.

The Mayor's License Commission denying this license is a back doorway of revoking. There are due process procedures to close a bad place and there are methods to prevent openings of liquor stores (local options and moratoriums). In the event the licensee operates a bad place, he is subject to due process. Any citizen can file a complaint that the licensee is operating a bad place. The deliberate and coordinated effort to deny the application by any means possible despite the applicant's exemplary conduct and credentials should not be permitted. The City is reversed and the license should be granted.

COMMISSIONER ADAMS' CONCURRING OPINION

This matter comes before the License Appeal Commission for a hearing "de novo" on an appeal from the Local Liquor Control Commission of the City of Chicago denying an application for a tavern license at 650 N. Dearborn. The April 6, 2007, denial letter from Scott Bruner stated the basis for the denial was that the granting of this license would have a deleterious impact on

the health, safety and welfare of the surrounding community. This is an allowable basis to deny a liquor license application pursuant to the City of Chicago's Municipal Code.

Testimony to the opposition to this license came from the District Commander Steve Georgas. It is interesting to note that Commander Georgas earlier expressed no objection to the issuance of this license. When questioned about his change of position the Commander gave general statements but no specifics. The Commander did testify that presently there are traffic and congestion problems in the area that there were 356 calls to the Office of Emergency Management for this block of North Dearborn from January 1 through May 31, 2007. He did not break down these calls as relating to the existing licensees. Another nightclub in the area would directly impact how he assigns his police resources.

Numerous community members testified in opposition to the issuance of this license. They testified to problems with traffic, valet parking, noise, public urination, public vomiting and public intoxication. While some other liquor establishments were mentioned it seems all citizens placed the source of these problems as flowing from the Excalibur and Vision nightclubs which are located immediately south of this proposed location.

The evidence showed that Excalibur and Vision were once the same establishment but broke into two establishments a few years ago. Combined they are one of the largest nightclubs in the city. They cater to a younger crowd and are open until 4:00 am during the week and 5:00 am on Saturday.

The applicant presented credible witnesses that the issuance of this license would not add to traffic problems. An expert on traffic testified that the traffic on Dearborn was manageable and the valet system to be implemented would not cause further congestion. Experts on real estate testified that property values are not declining in this area. The business plan presented by the applicant is to run a "Sinatra" type piano bar and retro club. The clientele they hope to attract is an older, professional crowd that are unlikely to be an additional source of the problems already existing from the patrons of Excalibur and Vision. Testimony was also introduced stating the background and experience of Mr. Wozniak in the management of this type of establishment.

The City's position is that the issuance of a tavern license to Dearborn Restaurant Group would exacerbate the existing deleterious conditions in the community caused by Excalibur, Vision and other liquor licenses. The burden of proof on this issue is on the City and must be proved at this hearing. The City failed to meet its burden. The denial of this license is reversed.

CHAIRMAN FLEMING'S DISSENTING OPINION

Pursuant to Section 40-60-040 (h) of the Municipal Code of the City of Chicago, the Local Liquor Control Commission may deny a liquor license application if "the issuance of such license would....have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located". After a review of various documents the Director of the Local Liquor Control Commission denied the application of the Dearborn Restaurant

Group, Inc. based on the position that the issuance of said license would have a deleterious impact on the health, welfare and safety of the surrounding community. The applicant filed a timely appeal and this matter was heard “de novo” by this Commission with testimony being heard on several days.

A few matters should be noted before this decision continues. While Corporation Counsel stated in opening statement that this case dealt with an application for two separate licenses, it seems that there was only one tavern application made. There was also mention in opening statement that the denial was based on the conclusion by the Local Liquor Commissioner that the issuance of this license would create a law enforcement problem. I do not find the law enforcement problem set as a basis for denial on April 6, 2007, letter of denial from Scott Bruner. As such I will deal with this case as being based on a denial solely on the issue of deleterious impact and will view testimony regarding what impact an issuance of a license would have on law enforcement within the scope of whether a deleterious impact has been established.

The City presented testimony of 18th District Police Commander Steve Georgas. While he originally did not approve the issuance of this license, he reconsidered that opinion and testified in opposition to the license. He is familiar with the area within a one block radius of 650 N. Dearborn. Within that space are a number of liquor establishments but on that same block are the nightclubs Excalibur and Vision. Excalibur was described by the Commander as probably the city's largest nightclub. Commander Georgas is personally on this block almost every Friday and Saturday night. He observes large crowds and traffic congestion on a typical

Friday of Saturday. Commander Georgas also testified that from January 1 through December 31, 2006 there were 872 calls for service for this one block of North Dearborn, from 600 to 700 north. From January 1, 2007 through May 31, 2007, there were 356 calls for service for this block. These calls related to all types of police service and were not specifically related to problems at a specific liquor establishment. On cross it was suggested that 302 of the 872 calls came with a reference to the address of Excalibur at 632 N. Dearborn. The Commander opposed the issuance of this license since he felt it would add to the congestion, the traffic and make it harder to police the area.

Alderman Brendan Reilly testified in opposition to the issuance of this tavern license. His opposition was partially based on the fact that this is a short block with existing problems related to the two existing licenses at Vision and Excalibur. The Alderman has received complaints of double parking by the Excalibur valets, long lines on the sidewalk, public intoxication, urination and vomiting in the alleys and sidewalks and loud crowds late at night. The Alderman has personally observed on a Friday night ten cars double parked on Dearborn and has seen long lines and raucous crowds on the sidewalk. Based on this being a short block and the applicant's location being so close to Vision and Excalibur, Alderman Reilly's opinion is that the significant problems already existing will be exacerbated.

A number of citizens testified in opposition to the issuance of this license. Almost in unison they described problems with traffic control due to double parking on Dearborn, public intoxication, littering, public urination and vomiting. They also complained of being awakened

in the early morning hours by the noise from the large number of people leaving the nightclubs and by the noise from the traffic. Visual evidence in the form of photos and a CD documenting these types of complaints were introduced into evidence. While some other liquor establishments were named the large majority of the complaints dealt with Excalibur and Vision.

The applicant presented evidence from an expert in traffic analysis. After reviewing the area, his opinion was that traffic on Dearborn was manageable and that the proposed plan of operation for the applicant's valet service would avoid problems that Excalibur has with its valet. Expert testimony was also produced that despite fear of the residents the market value of property in this area was increasing.

Mr. Wozniak testified that he has been in the nightclub entertainment business for several years and has managed without problems nightclubs in New York, Lake Geneva and in Chicago. His business plan is to operate a club like he did at Jilly's on Rush Street. This club would cater to a elder, more mature crowd and would feature a piano bar and a retro nightclub. The piano bar would feature "Sinatra" type music. Food would be served incidental to the tavern license. Mr. Wozniak also testified to the steps he has taken and will take to avoid contributing to a deleterious impact on the community. These included security precautions, training of bartenders and staff, hiring an ex-policeman to run security, rodent control and garbage pickup.

River North is one of the entertainment Meccas in the city of Chicago. Within River North there are hundreds of liquor licenses, thousands of hotel rooms and thousands of available

parking spots. One moves to an area like River North in order to take advantage of the hospitality provided by the restaurants and liquor licensees. This does not mean that an applicant for a new liquor license in this area is not subject to the requirements of the Municipal Code. If the issuance of a new license would have a deleterious impact on the health, safety and welfare of the community in which the licensed premises is to be located the license may be denied.

The community where this license would be located has been subject to traffic problems, to litter problems, to noise problems, to public intoxication and vomiting and public urination. While these problems are related to the operation of and the patrons of Excalibur and Vision the fact is that they do exist. The addition of another liquor license to an establishment only about 1/4 block away with a proposed capacity of almost three hundred people would certainly exacerbate these existing problems and cause a deleterious impact on the community where the license would be issued.

I would uphold the denial of the license to Dearborn Restaurant Group, Inc. for 650 N. Dearborn Street.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local
Liquor Control Commissioner of the City of Chicago be and the same hereby is REVERSED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this
Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed
to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the
petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as
such petition is a jurisdictional prerequisite to the administrative review.

Dated: October 25, 2007

Irving J. Koppel
Commissioner

Don W. Adams
Commissioner

Dennis M. Fleming
Chairman - IN DISSENT

