

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Infusion Cafe, LLC)	
d/b/a Infusion Cafe)	
Applicant (Expansion of COP-IA))	
for the premises located at)	Case No. 11 LA 06
6118-6120 North Lincoln Avenue)	
)	
v.)	
)	
Department of Business Affairs and Consumer Protection)	
Local Liquor Control Commission)	
Gregory Steadman, Commissioner)	

ORDER

DECISION OF CHAIRMAN FLEMING

Infusion Cafe, LLC has been operating as a restaurant with a Consumption on Premises – Incidental Activity license since approximately November of 2009. On approximately October 10, 2010, Infusion Cafe, LLC filed their application for a Consumption on Premises – Incidental Activity liquor license in an expanded area.

On December 16, 2010, Gregory Steadman in his position as the Local Liquor Control Commissioner of the City of Chicago denied this application. This denial was based on his consideration of written objections from area residents and community groups. After this review, he determined granting this license to this applicant would have a deleterious impact on the health, safety and welfare of the surrounding community. On or about January 4, 2011, the applicant filed its Plan of Operation that it believed would provide reasonable assurance that the issuance of this license will not have a deleterious impact on the surrounding community. On January 7, 2011,

Commissioner Steadman found that the proposed plan of operation did not provide reasonable assurance that the issuance of the expansion of liquor license would not have a deleterious impact on the community. The denial of this application based on deleterious impact grounds was upheld. The January 7, 2011, letter of denial sets out the specific reasons for this decision.

The applicant filed a timely appeal with this Commission. The matter proceeded to hearing on June 15 and 30, 2011. Assistant Corporation Counsel Noel Quanbeck represented the City and attorneys Ralph Sammarco and David Kugler represented Infusion Cafe, LLC.

Since the case deals with denial of an application for a license the issue before this Commission is to determine, de novo, the propriety of that decision. A summary of the testimony before this Commission will help one understand this rationale of this decision.

Alan Davis lives at 6133 N. Christiana with his wife. His home is almost twelve feet of alley from the property line of 6118-6120 N. Lincoln. He considers his neighborhood residential but it is adjacent to a commercial district. In his view, the business which is presently located at 6118 N. Lincoln, Infusion Cafe, LLC, is a blasting loud nightclub open until 4:00 in the morning. Mr. Davis explained there is a parking lot adjacent to the applicant's premises which overflows at night. When that lot is full people park on the street. If they expand where are the cars going to go?

Mr. Davis and his wife have never been customers of Infusion Cafe, LLC and he does not know the owners or managers. He and his wife have specific concerns over the issuance of an expansion license for Infusion.

His concerns include additional traffic coming and going all night on his street, car doors slamming until 4:00 a.m., loud intoxicated people coming out the back door urinating and hanging out in the parking lot, and garbage and liquor bottles in the bushes. When there is already a big problem, a bigger problem is not needed.

Mr. Davis has kept a log of his calling the police to complain about these concerns. He has called the police two to three weekends a month and several weekdays a month. He called the police on these dates with these complaints:

- a. February 17, 2010, at 3 a.m. for loud D.J. music, at 5:00 a.m. for people entering through the back door, and at 6:00 a.m. for the back door opening and closing.
- b. March 6, 2010, at 10:15 p.m. for loud music
- c. March 7, 2010, for loud music
- d. April 3, 2010, for blasting loud music
- e. April 4, 2010, at 12:30 a.m., 1:15 a.m., and 2:00 a.m. for loud music
- f. April 16, 2010, at 2:45 a.m. for loud music
- g. April 17, 2010, for cars in lot until 6:00 a.m.
- h. April 23, 2010, has a notation for blasting loud music but no call was made to the police.
- i. April 30, 2010, a call to the city Department of Construction that work was being done without a permit posted.

- j. May 1, 2010, two calls to the police for loud music and being open past 2:00 a.m.
- k. May 10, 2010, call for loud crowd in the parking lot and loud music from premises.
- l. May 15, 2010, three calls for loud music at 11:00 p.m., 11:30 p.m., and 11:59 p.m.
- m. June 12, 2010, call about loud crowd on lot and loud music from inside at 9:15 p.m.
- n. June 27, 2010, two calls at 12:30 a.m. and 1:30 a.m. for loud music
- o. July 3, 2010, calls at 12:30a.m., 1:30 a.m., 2:30 a.m., and 4:00 a.m. for loud music
- p. July 30, 2010, calls at 2:50 a.m. and 3:00 a.m. for being open after hours
- q. September 11 and 12, 2010, four calls for loud music from 11:40 p.m. through 1:30 a.m.
- r. September 12, 2010, call at 10:20 p.m. for loud crowd in the rear parking lot.
- s. September 17, 2010, call at 10:30 p.m. for a loud crowd in the parking lot
- t. September 18, 2010, call at 11:40 p.m. for a loud group in the parking lot
- u. October 13, 2010, call at 11:30 p.m. for loud music on premises
- v. October 14, 2010, call at 11:45 p.m. for loud music
- w. October 15, 2010, call at 1:30 a.m. for loud music
- x. October 17, 2010, call at 12:30 a.m. for loud crowd in parking lot
- y. March 14, 2011, call at 2:15 a.m. because of argument between individuals in the parking lot about a two car accident.
- z. March 19, 2011, call at 11:37 p.m. for loud music
- aa. March 20, 2011, calls at 12:00 a.m. and 1:30 a.m. for a loud crowd in the rear lot and then loud music.
- bb. March 27, 2011, calls at 12:20 a.m. and 1:10 a.m. for loud music

- cc. April 2, 2011, call for loud crowd in rear lot at 11:45 p.m.
- dd. April 17, 2011, call at 5:05 a.m. for loud crowd in rear parking lot
- ee. April 23, 2011, calls at 2:07 a.m. for being open beyond closing and a 2:30 a.m. call for loud crowd in the parking lot.
- ff. April 24, 2011, calls at 12:15 a.m., 12:42 a.m., and 1:30 a.m. for loud music
- gg. April 29, 2011, call at 11:45 p.m. for loud music
- hh. April 30, 2011, four calls at 12:20 a.m., 12:38 a.m., 1:15 a.m., and 1:37 a.m. for loud music and at 12:28 a.m. also for large crowd in the parking lot.

Mr. Davis explained he and his wife were traveling at times when there was a break for calls. He does not know if the police responded to these calls but in general the music would go off twenty minutes after he called the police. He believes the crowds in the parking lot are connected to Infusion because he could see people coming and going through the door. Mr. Davis explained he is not opposed to liquor sales per se or taverns in a properly zoned location. Other restaurants along Lincoln Avenue that have incidental activity licenses close between 9:00 p.m. and 11:00 p.m. He has not had any problems with these other establishments. Since Infusion Cafe was issued its liquor license he has noticed a greater amount of garbage, a higher level of vandalism and noise. His security camera which had a view of the activity in the lots was broken off and stolen. His car windows were smashed. Any increase in the amount of disturbances would be intolerable.

On Cross Mr. Davis stated residential parking stickers in his area end at 8:00 p.m. Other locations on Lincoln stay open after 8:00 p.m. He explained Lincoln Avenue is

zoned commercially with B-1-2 zoning. No arrests were made with respect to the security camera. He believes the expansion is for one store front. He could see booths and speaker stands in the new area by looking through the window. There is an awning and sign located at the front door but a large amount of people use the rear door. He does not know if the police issued any tickets or made any arrests in response to his calls. Davis admitted none of his calls dealt with urination, broken bottles, or litter. He does not know if there was an arrest for vandalism on his car. The clientele of Infusion appear to be between 21 and 30.

Mr. Davis explained he has seen several incidents of public urination and liquor bottles tossed out of cars.

Bryan Knipper has been a Business Consultant Supervisor for the Department of Business Affairs and Consumer Protection for two and a half years. He is involved in the processing of liquor license applications. He has received the materials submitted by Infusion Cafe, LLC for an expansion of its consumption on premises – incidental activity license in October of 2010. His department received complaints and objections to this expansion regarding noise and parking problems. The file contained 23 objections from community members. Knipper received pictures in City's Exhibits 3-66 through 3-89, which consisted of pictures on the club's Facebook which suggested Infusion was more a nightclub than a restaurant. Knipper stated the plan of operation submitted by the applicant did not address issues about noise and parking. It did not address how they would police the area and keep the patrons on their way out of the neighborhood. The

Department also felt that the fact the applicant was doing alterations without following proper procedures lent credibility to the fact they did things the wrong way. A permit was issued six days after a Stop Work Order was posted. Knipper did not know how long it took to get a building permit. He did not speak personally with any community members or with the police commander.

In response to questions from the Chairman, Mr. Knipper could not say if anyone at the Local Liquor Control Commission spoke with the community group. He was not aware of a community group in favor of the license. There were no objections from the police commander and, in fact, there was a fax from the commander stating he had no objections to the issuance as long as it was within the law of the city. There was no Aldermanic objection.

Sylvia Asllani lives at 6057 N. Lawndale and is the President of Peterson Park Improvement Association. That group advocates for the community and is interested in concerns in the community such as a new liquor license or an expansion of use of a liquor license. She is aware there is a liquor license issued to 6120 N. Lincoln and that the licensee seeks an expansion one door south at 6118 N. Lincoln. She has met the applicant and discussed this issue with the board members. No one within the group objects to this expansion. She does not frequent the location which she described as a restaurant that serves liquor until 2:00 a.m. on weekdays and 3:00 a.m. on weekends. She was contacted by Mr. Davis who expressed his concerns about problems in the establishment. Davis contacted her in her role as president of this community group. She

spoke with Mr. Klenja, the applicant, who denied the allegations. She investigated this issue by speaking with neighbors and board members. She and Mr. Klenja went and met with then Alderman Stone. Alderman Stone indicated he had no complaints. Based on her investigation she sees no reason for the expansion not to be granted. She has not received any phone calls, emails or complaints from members of the community against this expansion. In the normal course of her business as president of the group, she would have received calls of that nature.

The witness listed all the members of the board and stated they live in the area of 6118 N. Lincoln. The boundaries of the group are Devon to Peterson and Pulaski to the river. None of them live near the licensed premises. None have hard complaints as board members. The latest she would have been in the area of Infusion was about 8:00 p.m. or 9:00 p.m. Mr. Davis complained of noise and people congregating. She did not witness these issues. She did not personally speak with neighbors, but Alderman Stone related no complaints about the licensee.

Diana Cohen and her husband own the property at 6118 N. Lincoln Avenue. They have a commercial lease with Infusion Cafe, LLC that allows it to operate a restaurant and cafe serving liquor. She has received no complaints from anyone in the immediate area regarding the operation of this location. While she has heard from Mr. Klenja about visits from the police and fire she was not aware of any violations being written. She and her husband revoked the lease of the previous tenant due to complaints from the Neighborhood Association. She and her husband have driven up through the

alley all hours until 12 o'clock and it is quiet. She assumed people would have complained to the Alderman who would have contacted her. She assumed that is how she was reached the first time. The previous tenant had a lease to operate a computer store and started operating a computer/internet cafe. She then starting receiving complaints. She and her husband starting coming around the property in mid-2010 after Mr. Klenja told them about how often the police were coming. There was a DJ booth and sound equipment on the premises but there was no music playing. She has been on the premises in the evening, at nighttime and weekends and has never seen anything that Mr. Davis described.

Agim Klenja is the owner of Infusion Cafe which serves food and liquor at 6120 N. Lincoln. It is a commercial kitchen with liquor. The business is open from 8:00 a.m. until midnight, Monday through Thursday. The occupancy is now 84 and would be 99 if the expansion is granted. Fifteen more seats will be added as well as a bathroom and storage. He knows Mr. Davis and heard Mr. Davis list the number of incidents he has witnessed and reported. In response to complaints the police come to the premises every second or third day but his licenses are good and he has never been closed as a result of these police visits. Other departments like Business Affairs and the Fire Department have come to the location but no citations have been issued and he has not been closed down. Customers enter the premises through the front door. Employees and an occasional customer use the back door. That door cannot be locked because of fire safety. He has a sign on the back door asking customers to enter through the front door and he has signs posted asking his customers to leave quietly and not gather in the

parking lot. He has employees ensuring this happens and has employees cleaning up the parking lot and the front of the business. There are nine security cameras outside with one focused on the parking lot. He can see the backdoor, the parking spaces, the alley and Mr. Davis' house. There are never large groups in the parking lot and the music is not so loud that people cannot stand to hear it. The windows in the back are closed and the door is not left open to let music escape from the building. He has never been asked to appear before the Liquor Commission with respect to any citations. He has an employee stationed to ensure people do not leave through the backdoor. Everyone exits through the front door and they then walk to the parking lot. The police came in response to complaints about noise. He did receive a citation for his license being on hold but that case was dismissed at the Department of Administrative Hearings. He is not aware of any cases pending at the Department of Business Affairs and Consumer Protection. A revenue investigator was investigating noise a few weeks ago and did not write a ticket because they could not hear anything. The witness denied vandalizing Mr. Davis' property and added his car was broken into while in his parking lot. Infusion does have a website and has had an individual named Gazi perform at the cafe for birthday or engagement parties. DJ's have performed at Infusion a few times. Infusion has a laptop-type computer with two speakers. There is no dance floor per se, but people do dance if they want to dance. Albina Nrejaj performed at Infusion for his birthday on April 25, 2011. That was a private party.

Cases of denial of a license application based on deleterious impact require a two-step analysis. The first issue is whether the City has proved by a preponderance of the

evidence that the issuance of this expansion of an existing license at these premises will cause a deleterious impact on the community. If the City has met that burden, the second step of the analysis would address whether the proposed plan of operation provides reasonable reassurance that the issuance of this liquor license will not have a deleterious impact on the surrounding community.

In this case based on the evidence in the record the City has failed to prove by a preponderance of the evidence that the issuance of the expansion license would cause a deleterious impact on the health and welfare of the surrounding community. While this Commissioner believes that in an appropriate case the credible testimony of a single witness can be sufficient for the City to sustain its burden of proof this is not one of those cases.

Mr. Davis testified to over 50 occasions where he personally called the police for loud music and/or crowds in the parking lot. These calls dealt with a time period from February 2010, through April of 2011. If substantial or corroborated this type of behavior would have been sufficient to find the existence of a deleterious impact which could be exacerbated by the issuance of this expansion license. Substantiation and corroboration are important in this case since Sylvia Asllani has testified individually and as her capacity as President of Peterson Park Improvement Association, that her and her organization have not had these types of complaints. Her testimony added that the Alderman of this ward, when the application was filed, met with her and the applicant and indicated he had not received complaints against the applicant. There was no

aldermanic objection filed to this application. Corroboration of Mr. Davis' testimony could have been provided by evidence of the responses to calls for services. Such evidence might show complaints of noise and crowds on dates other than those of Mr. Davis. Testimony from the District Commander about problems with this establishment would also have corroborated Mr. Davis. There is no such evidence and Bryan Knipper and the application file contained a fax from the District Commander not objecting to the issuance of the license. The applicant testified that the police are at the premises every second or third day, and that investigators from Business Affairs and the Fire Department have also come to his location. No citations have been issued.

With respect to concerns of increased traffic, public urination and litter the evidence on those issues were insufficient for the City to have met its burden of proof.

It is important to note what is not encompassed within this decision. This decision should not be construed as saying the City did not prove that the location is actually a bar, not a restaurant. It does not say the licensee was not operating without a Public Place of Amusement license. It does not say that the licensee was not allowing patrons to remain on the premises after hours. This decision does not prejudge whether Mr. Davis and other neighborhood residents would be successful if they exercised their rights under the Section 4-60-190 of the Municipal Code of the city of Chicago. Those matters are not before this Commission in this case.

The City failed to meet its burden of proof that the issuance of this license to expand would cause a deleterious impact on the health and welfare of the surrounding community. The denial of this license is reversed.

CONCURRING OPINION OF COMMISSIONER O'CONNELL

While I concur with the decision of Chairman Fleming and agree with his reasoning, I would like to point another area where the complaints by Mr. Davis are not corroborated by the evidence in the record.

Mr. Davis made several calls to 911 concerning crowds and loitering in the parking lot. While the record contains pictures of the area behind the licensee's establishment and of the parking lot, these pictures were not taken at the times Mr. Davis complained that there were large and loud crowds loitering in these areas. Pictures of this loitering on even one occasion would have been persuasive evidence to corroborate and substantiate his complaints.

I agree with Chairman Fleming that in an appropriate case the testimony of a single credible witness can be sufficient evidence for the City to sustain its burden of proof. I also agree with Chairman Fleming this is not such a case. The denial of this license is reversed.

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 4, 2011

Dennis M. Fleming
Chairman

Donald O'Connell
Member