

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Bureau Bar LLC	)	
d/b/a The Bureau Bar	)	
Applicant (Tavern)	)	Case No. 13 LA 12
for the premises located at	)	
75 East 16 <sup>th</sup> Street	)	
	)	
v.	)	
	)	
Department of Business Affairs and Consumer Protection	)	
Local Liquor Control Commission	)	
Gregory Steadman, Commissioner	)	

ORDER

DECISION OF CHAIRMAN FLEMING

The respondent’s application for a Tavern license was denied by the Local Liquor Control Commissioner on the basis that the issuance of the license would have a deleterious impact on the health, safety, and welfare of the surrounding community. The issues raised included parking problems, safety concerns for pedestrians, noise, public intoxication, and unruly behavior for patrons of the establishment. In Section 4-60-040 of the Chicago Municipal Code, deleterious impact is defined as having an adverse effect on the value of any property, an increased risk of violations of law, or a risk of a substantial increase in noise, litter, or vehicular congestion. Within twenty (20) days of this original denial, the respondent filed a Plan of Operation pursuant to the Chicago Municipal Code which the respondent felt provided reasonable assurances that the issuance of the liquor license will not have a deleterious impact on the surrounding community. After his review of the Plan of Operation, the Local Liquor Control Commissioner disapproved the proposed Plan of Operation because it did not provide reasonable

assurances that the issuance of a liquor license will not have a deleterious impact on the community. The respondent filed a timely appeal with the License Appeal Commission.

A synopsis of the evidence will help in understanding the reasoning behind this decision.

Bryan Knipper has been a Business Consultant Supervisor for the Department of Business Affairs and Consumer Protection for five years. He reviews applications with Gregory Steadman, the Local Liquor Control Commissioner. He was involved in the processing of the license application. The witness identified City's Exhibit 2, in evidence, as the original denial letter based on deleterious impact. It also references quality of life issues such as citizen concerns about noise, parking, and behavior of people who would patronize the establishment. He identified City's Exhibit 3, in evidence, as an objection letter signed off by a group of citizens. After the initial denial letter was issued, the applicant provided a Plan of Operation to abate any deleterious impact. Additional information about the noise issue was sent to the Local Liquor Control Commission during this time. The Plan of Operation was rejected and a final denial letter was issued. The basis for the final denial concentrated on the noise issue which the Commission felt was not adequately addressed. The final denial letter also stated concerns about hours of operation and impact on residential property values. City's Exhibit 4, the proposed Plan of Operation, and City's Exhibit 5, the final denial letter were allowed in evidence.

Kevin Clancy Meyer has lived at 75 East 16<sup>th</sup> Street, Unit 2, with his wife Betsy Wulff for over three years. This is a condo building with commercial condo units in the ground and three residential units above the commercial units. There are seven such units with different

condo associations. The proposed location for the applicant's space is in the commercial unit immediately below his residential unit. They share the same walls to the east and west, and his floor is above where Bureau Bar sits. Other occupants of commercial units include an acupuncturist/Tae Kwan Do business, a nail salon, a glassware buyer, and a hair salon or barbershop. For a year and a half after they moved in, the previous occupant was an art lounge called BP's Art Lounge. It served tea and coffee during the day and wine at night. It was not open every night and never opened past 10:00 p.m. They were respectful and he never heard noise in his unit on a regular basis while it was located there. On two or three occasions it was rented to outside groups for larger gatherings of up to 20 people. Crowds would spill onto the sidewalk and it was loud. He could hear noise coming from outside the units and could hear music from inside the building. On two or three occasions he had to go down and tell the people to be quiet.

The witness stated there would be more parking congestion when people would be dropped off. 16<sup>th</sup> Street is not busy and there is ancillary traffic coming off Michigan and Wabash. There are meters for parking on both sides of 16<sup>th</sup> Street.

The garbage facilities are behind the commercial unit. That unit does not extend as far back from 16<sup>th</sup> Street as the residential units, and his bedrooms sit over an area that has an enclave for two parking spots and the dumpster. There is only one dumpster for the residential and commercial units. This was not an issue with BP's because the volume of waste was not high. The few times there was an issue was a result of those special events where food was

consumed on premises. The containers for alcohol and non-alcoholic beverages overflowed the dumpster which limited the residents' ability to dispose of their garbage.

The music that came from downstairs during these special events was much louder than normal and made it hard to enjoy the unit. With the windows open, the noise from conversations outside was too much for them to enjoy their home.

Mr. Meyer opposes the license because of problems experienced during the construction of Bureau Bar. These problems relate to noise, disposal of waste, parking issues in the secure area for owners, and concerns about smoking. He is concerned about exposing children to the things that come along with bars.

Mr. Meyer is the president of his condo association and has reached out to residents in the buildings from 73 to 67. There are concerns with the rest of this group not unique to Mr. Meyer's interest. When he became aware of this application, he spoke to about 14 or 15 of the 48 units. Most of the chief concerns focused on exposure of children to the bar such as noise, people coming and going, issues with potential smoking, the hours the bar would be open and safety in general. He drafted City's Exhibit 1, which is a petition filed with the Department of Business Affairs and Consumer Protection. Each of the signatories live from 79 to 67 East 16<sup>th</sup> Street, and there are about fifteen signatures out of 28 total units. No one specifically stated he was in favor of the bar. The other commercial units close about 9:00 p.m. and the bar would be open until 3:00 a.m. on the weekends. More crime exists at night and having the bar open lends

itself to increase the ability for crime to occur. Of the 21 residential units, ten have children and some have multiple children. The individuals are mostly professional young singles or couples.

Mr. Meyer added he and his wife have been personally affected because they have delayed deciding to start a family because the noise would impact the child. Individuals who live above the other commercial units have issues during the day but those all close no later than 9:00 p.m.

Construction of the bar started last August and at first the work was intermittent during the day, but not every single day. In December there was power tool drilling into the ceiling through 11:00 p.m. He and his wife could also hear the construction workers and hear the toilets flushing. Over the last couple of months, they can hear the television on and hear conversations clear enough to be able to distinguish voices. The witness and a neighbor that lives above him have gone to the bar to complain about intolerable noise. In January, the applicant contacted the witness to reach out about noise issues. He came up so he could hear how loud the music from the bar was. Kenny later brought an individual to their unit to hear the music and help to soundproof the ceiling. He later received an email from Kenny in January of 2012, to tell him more insulation was being put into the ceiling. Later, Kenny played music at different times while asking the witness over the phone what it sounded like. Kenny never came up to test and never asked about the noise level. Subsequent to the additional insulation being installed, he and his wife could hear noise and still hears noise from employees. As of April 13, his wife was home alone and could clearly hear excessive noise from 8:00 p.m. until 11:00 p.m.

Mr. Meyer's concern about smoking is that the front of his unit abuts the sidewalk. They had minor smoking issues with 3Ps when it was opened and during construction; the smoke in front of the property and he was able to smell the smoke whether the windows were open or closed.

Mr. Meyer indicated there are no current issues with traffic congestion with the exception being when a truck parks on 16<sup>th</sup> Street to deliver to the bar. Deliveries are not to be made through the rear of the bar.

The owners of the condo units had issues with 3Ps garbage disposal at times. When there were a large number of individuals present, dumpsters overflowed and there was an increase in rodents. The applicant is not planning to provide food but that would be a concern. There is concern about disposal of alcohol containers.

Mr. Meyer also has concerns about persons entering the bar gaining access to the residential units by following a resident into the building. The witness also believes issuing the license would lower real estate values.

Mr. Meyer had spoken with Kenny Johnson before drafting the petition in opposition to the license in January, 2013. Mr. Johnson explained his plan was to have a neighborhood type bar where people have drinks. Meyer argued the space is small, but had larger seating than he anticipated. After Meyer expressed his concerns, he and Kenny met a few days later so Kenny could hear the noise from music in the bar area. That was the first week of January. A few days

later, Johnson returned to the Meyer's unit with a sound man to listen to the music from downstairs. Subsequently, the witness was emailed by Mr. Johnson and was told more insulation was to be blown into the ceiling. The email suggested the parties talk the next Friday to discuss the success of the additional insulation. There was no follow-up after the email contact with respect to sound proofing and the witness did not recall discussing soundproofing with Kenny Johnson in the bar on March 1, 2013.

Mr. Meyer is aware of other liquor establishments in his area. He is not affected by noise from these places as they are not directly in the vicinity of his unit. He and his wife did have concerns about whether to live above a commercial unit but when they visited in the evening 3Ps was closed. He did agree security standing in front of the bar potentially could eliminate late night break-ins. Mr. Meyer reviewed the Plan of Operation proposed by Mr. Johnson and agreed it could potentially address the garbage issue. Security could potentially address the loitering and smoking concerns in front but not in the back. He does not feel security at the bar would address the negative impact on children.

Betsy Meyer, professionally known as Betsy Wulff, also testified in opposition to the issuance of the license. She is the wife of witness Kevin Clancy Meyer. She agreed with the concerns listed in the petition in opposition in evidence as City's Exhibit 3. Her specific objections were raising a family above a tavern due to noise and the value of the property.

Rebecca Riley lives at 75 East 16<sup>th</sup> Street, Unit 3, which is the second unit above the commercial unit, which is the site of the applicant's premises. She has lived at that address since late December and learned about this application a few days before closing. When she became aware of this application, she became extremely upset. She never would have purchased her unit if she knew this was to happen.

Kenneth Johnson has lived in the neighborhood for 13 years. He now lives with his wife and sons at 2011 S. Prairie which is three blocks away from 75 East 16<sup>th</sup> Street. He owns his own company named Life Brain in which he works as a marketing consultant for Fortune 500 companies that want to market to African Americans, Hispanics, and teenagers. Previously, for ten years, he was a manager of a Latin restaurant and nightclub by the East Bank Club. He became aware the property at 75 East 16<sup>th</sup> Street was available because he knows the woman who owns the space and he was familiar with the 3Ps Art Lounge. That was a lounge that sold art but it also had a full bar. He was present there in the evening and there was music playing. 3Ps had a regular type of sound system but that system was damaged in a flood before the witness took over the premises.

Prior to starting construction on his bar, the witness met with Julius Dickens who had at one time been president of the association. Mr. Dickens told him if he ran the bar in a responsible manner there would be no problems from us. 3Ps had a liquor license, a packaged good license, and a retail food license. Johnson tried to purchase the existing licenses but Bank of America was owed a substantial amount of money and would not agree to a change of officers. Bureau Bar is designed to be an intimate neighborhood bar with about one thousand

square feet. It will have 28 seats and possibly room for 20 people standing. The maximum number of people in the bar would be 40 people.

Construction on the bar started in middle and late August and September, and lasted until January. Sound proofing was done later. The witness invested about \$75,000 into the business. He installed an audio-video system that is a residential system. At present, the speakers are in the ceiling and the TV's are the only things you can hear. Music is all iPad or iPhone driven. He became aware of a concern from neighbors when he became aware of a letter in opposition being circulated. He met with Kevin and went upstairs to Kevin's unit to talk about the noise. A couple of days later, the sound guy came over to Kevin's unit. He turned on the television and returned to Kevin's unit. All could hear the sound and agreed something needed to be done. The only complaint or concern mentioned was noise. There was no discussion of criminal activity or impact on children. In late February, additional sound proofing was installed. Kevin indicated it was better but noise could still be heard. The witness told Kevin that was just the first round. Before additional work was done, the denial letter was received. This conversation was about March 1<sup>st</sup> in the bar. His landlord reported a complaint about the construction crew putting debris in other people's trash. That was not true as he made arrangements for removal of the heavy stuff.

After the initial denial letter, the applicant put together a Plan of Operation to address the issues in the denial letter. He made an agreement with a church to use 60 parking spaces so patrons would not need to park on the street. The plan proposed a doorman at the front to ensure customers are not lingering in front. The doorman and staff will watch for unruly behavior and

assist them to get home safely. The plan also included an agreement to close early at 11:00 p.m. Sunday through Thursday. The first step on abating noise has been done. The second step, which would have included a double drywall process, was not implemented because of the denial letter but Mr. Johnson would be willing to install Phase 2 if granted a license. The witness reached out to neighborhood associations and organizations who supported this license. The Prairie District Alliance and Greater South Loop Association issued letters of support. Alderman Fioretti issued a letter of support as did Alderman Dowell. He also obtained petitions in support of the license.

Armeo Banks owns his own company Trendsetter Systems and has worked for it for eight years as a video installer. His business is about 50% residential and 50% commercial. He was asked by Mr. Johnson to provide audio-video for the Bureau Bar. The witness proposed two flat screen televisions and what was basically a residential audio system. The final plan was revised to six speakers and one subover which is not operable. Mr. Johnson conveyed his concern about an issue with noise bleed above the bar. Mr. Banks selected a sound insulation company named DNH Industries which came in and sprayed rock wool insulation in the ceiling. He had previously been in the unit above the bar and could hear fairly substantial noise. After being told there is still a noise problem even after the insulation, the witness proposed steps to further eliminate the sound. He proposed adding speakers to different locations to move the source of the sound and removing the drywall. Mr. Banks opined additional treatment can address the sound issue.

Nykea Pippion-McGriff has been a real estate broker for eight years who represents buyers and sellers along the Lake Shore Drive communities. About 15% of her business is in the South Loop. She is familiar with the property at 75 East 16<sup>th</sup> Street, as she represented a pair of buyers and is currently working to get a listing to represent a seller. That buyer was about four years ago. This area is an established mixed use community with bars and restaurants in the area. The presence of these bars and restaurants are one of the selling points. She ran a comparative market analysis for 25 East 16<sup>th</sup> Street for a mixed use property. In this area she does not feel property values are going to be adversely affected with an additional bar. The properties in building with bars and restaurants sell at the fair market value. Her analysis showed Unit 2 at 73 East 16<sup>th</sup> sold for a profit in April of 2013 over the purchase price in 2011, as did Unit 3 at 73 East 16<sup>th</sup> Street. Having a tavern can be an asset for purposes of sale as opposed to the impact of having a vacant or dark storefront in a commercial unit.

The Chicago Municipal Code allows for a denial of an application for a liquor license if its issuance would tend to cause a deleterious impact on the health, safety, and welfare of the surrounding community. Section 4-60-040 defines deleterious impact as having an adverse effect on the value of any property, an increased risk of violations of the law, or a risk of a substantial increase in noise, litter, or vehicular congestion. The resolution of this question is based on the specific facts of each case. The issue becomes will the issuance of this tavern license at this location cause a deleterious impact on the health, safety, and welfare of the surrounding community?

Cases alleging deleterious impact can be proven by direct evidence or by circumstantial evidence. Since a license has not been issued previously at this location to this applicant, there is no history of law the applicant would run this tavern at this location. While there was testimony that Kenneth Johnson was a manager of a club at a different neighborhood, there was no evidence introduced that he operated that club in a manner that led to quality of life issues. Such evidence, if it did exist, would be relevant to the analysis in this case. Concerns about whether issuing a license will lead to parking problems, safety concerns for pedestrians, noise, public intoxication, and unruly behavior for patrons are inherently speculative. Such concerns can be the basis to deny a license if they are based on the type of evidence presented in the M.J. Ontario case. That decision to deny a late hour license was affirmed because the speculative evidence was supported by the personal observations of the Alderman.

While we do not have the same scenario as in M.J. Ontario, we do have in evidence the problems that occurred when 3Ps allowed its premises to be used for parties. That testimony described problems with patrons lingering and smoking outside the entrance to the bar, as well as the noise problems coming from those patrons. In addition to that testimony, the evidence in the record shows that there is a noise problem emanating from the bar to the unit owned by the Meyer's. The fact is that the evidence in the record supporting the position that issuance of a license at this establishment would cause a deleterious impact comes solely from the Meyer's who are certainly biased witnesses.

This case involves a novel issue with respect to the application of the deleterious impact ordinance. This issue deals with the definition of the term surrounding community. This

Commissioner is not aware of any Circuit Court or appellate decisions defining what is encompassed within the scope of that term. Does a deleterious impact from noise that affects only one family in itself impact the surrounding community as to justify the denial of this license? In this case there is no question that the issuance of this license, at this location, will cause a substantial increase in noise to the Meyer's. There is no evidence in the record to support a conclusion that there will be a substantial increase in noise to anyone else in the surrounding community. To this Commissioner, the definition of community suggests all the people living in a particular area or place. The City has failed to prove by a preponderance of the evidence that the issuance of this license, at this location, to this applicant would cause a deleterious impact in the form of a substantial increase in noise to the surrounding community.

Based on the type of structure involved in this case, and the testimony concerning the problems that arose on the street when 3Ps had the private parties, the City did prove that the issuance of this license would cause a deleterious impact from noise from patrons, congregating and loitering of patrons, and unruly behavior of patrons of the establishment. Having made that decision, this Commission must now decide if the proposed Plan of Operation provides reasonable assurance that the issuance of the license would not have a deleterious impact. It is the decision of this Commissioner that the proposed Plan of Operation does provide reasonable assurance that the issuance of this license will not cause a deleterious impact.

It should be addressed that the final denial letter addresses specifically for the first time the question of an adverse impact on the property values of the residential units that would be

caused by the issuance of this license. There was no such evidence presented at the hearing and as such, the City failed to prove this assertion.

It is the decision of this Commissioner to reverse in part and to affirm in part the denial of this tavern license. It is the further decision of this Commissioner to reverse the finding of the Local Liquor Control Commissioner that the Proposed Plan of Operation did not provide reasonable assurances that the issuance of the license would not cause a deleterious impact on the health, safety, and welfare of the surrounding community. The tavern license shall issue subject to the terms of the applicant's Proposed Plan of Operation.

#### COMMISSIONER O'CONNELL'S CONCURRING OPINION

Although in other cases involving deleterious impact, this Commission has heard from larger segments of the community to establish such impact, this Commissioner believes that potential deleterious impact was established in this case (albeit weakly). I agree with the Chairman, however, that the proposed plan of operation addresses and satisfactorily resolves the issue and, therefore, this Commissioner concurs with the Chairman's opinion.

The denial of the tavern license is Reversed. The tavern license shall issue subject to the terms of the applicant's Proposed Plan of Operation.

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: August 28, 2013

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member