

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Third Rail Tavern, Inc.	)	
Thomas Kendall, President	)	
Applicant (Outdoor Patio)	)	
for the premises located at	)	
1133 West Madison Street	)	Case No. 13 LA 51
	)	
v.	)	
	)	
Department of Business Affairs and Consumer Protection	)	
Local Liquor Control Commission	)	
Gregory Steadman, Commissioner	)	

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

Third Rail Tavern, Inc.'s application for an Outdoor Patio license was denied by the Local Liquor Control Commission because of deleterious impact issues raised by the community. Those issues raised included parking problems, safety concerns for pedestrians, noise, public intoxication, and unruly behavior for patrons of the establishment. After reviewing the Outdoor Patio license application and the community responses, the Local Liquor Control Commissioner determined that issuing an Outdoor Patio license for the premises would have a deleterious impact on the health, safety, and welfare of the surrounding community. The Commission noted that the members of the community feel the issuance of this license would severely impact their quality of life.

The applicant submitted a Plan of Operation to abate the conditions which would cause the deleterious impact in a timely manner. That Plan of Operation was determined by the Local

Liquor Control Commissioner to be inadequate in that it did not provide reasonable assurance that the issuance of the license would not have a deleterious impact on the adjacent residential community. The applicant filed a timely appeal with this Commission.

### SYNOPSIS OF THE EVIDENCE

A review of documents reviewed by the Local Liquor Control Commission shows that there were a total of two letters sent to the Commission objecting to the license.

At the hearing, Lisa Pitler, one of those objectors, testified in opposition to the issuance of this license. In essence, she testified that the front of her townhouse faces the area where the outdoor patio would be located. She testified that the outdoor patio has not only been constructed but has been in operation. With the operation of the patio, she has been subjected to increased noise from patrons in the outdoor patio and patrons entering into the patio area from Rundell Place, the street/alley between her townhouse and the patio. She testified to an increase in vehicular traffic and to people smoking in the alley. These individuals have caused more trash to be in the area which has led to additional rats. She also complained that additional lights have been strung in a manner that causes the light to go directly into her bedroom. These lights are not street lights.

The Commander's representative testified that she did have concern about possible noise because the location of the outdoor patio was close to the front of the townhomes. However, she was not aware of any complaints of noise or that the patio was already operating. She also indicated there was no history of problems with the operation of the tavern without the patio

license. She was assured steps would be taken to lower the risk of any noise from the patio and to ensure patrons would not access the patio other than through the interior of the bar.

A neighboring property owner in the area testified that the problems referenced by Ms. Pitler do not exist. No new lights have been strung across the area above Rundell Place. The patio has not opened and there are no crowds of people loitering around Rundell Place. There have been no noise problems arising from the patio area. The bar has been operated in a manner that does not cause problems to the surrounding community.

The applicant testified to the measures he would install to prevent problems with the outdoor patio. He testified to the fact there have been no police problems in the operation of the tavern.

While the facts in the Vino Fino case are not applicable to this application, some of the reasoning from that case can be applied to this decision. If a person, entity, or applicant has a history of breaking liquor laws in the past, there is a greater likelihood there will be violations of liquor laws in the future. Conversely, if an applicant has a history of operating a liquor establishment without problems, it is more likely that applicant will continue to operate a licensed premises without violations of the liquor laws. The record in this case shows no history of the applicant violating liquor laws or the law in general.

Testimony from a single witness opposed to the issuance of a liquor license can be sufficient evidence to support a finding that the issuance of that license can be denied. That is

not the case with respect to this application. The testimony of Ms. Pitler is contradicted directly by other testimony in the record and indirectly by the lack of testimony from the Commander's representative about complaints dealing with the operation of the tavern.

Based on the entire record, the City failed to meet its burden of proof that the issuance of this patio license would cause a deleterious impact on the health, welfare, and safety of the surrounding community.

The denial of the Outdoor Patio 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: April 3, 2014

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member