

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

YOUMAX, Inc.)
d/b/a YOUMAX)
Applicant (Packaged Goods))
for the premises located at) Case No. 10 LA 13
2222 West Devon Avenue)
)
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONERS SCHNORF AND O'CONNELL

This matter proceeded to a *de novo* hearing before this Commission to address the issue of the propriety of the decision of the Local Liquor Control Commission of the City of Chicago to deny this application for a Packaged Goods liquor license at this location. While other grounds for denial were listed at various times in denial letters, the only basis presented at this hearing dealt with whether the issuance to this license at this address would have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is located.

Section 4-60-040(h) of the Chicago Municipal Code allows for the denial of any application for a city liquor license 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 located. "Deleterious impact" means an adverse effect on the value of any property, an increase

risk of violations of the law, or a risk of a substantial increase in noise, litter or vehicular congestion.

Kenneth Ditkowsky has been an attorney since 1961 and officed at one time at 2331 and 2335 W. Devon. He is still familiar with the area and has clients in the area. He drafted a petition in opposition to the issuance of this license which was circulated in the area and signed by numerous people. He did not sign the petition but opposes the issuance of this license primarily on his position there are already too many liquor stores on Devon Avenue. He is concerned that Devon Avenue will become another Howard Street area that became dangerous with high crime leading to neighborhood deterioration.

Neighborhood residents testified in opposition to the issuance of this license. All opined that there are already too many liquor stores in the area. Some of the witnesses did testify to the fact that there were crime problems and problems with gang bangers when this location was open as a packaged goods store. These problems ended when that store closed and they feel this license will bring those problems back to this location.

Other neighborhood residents testified in support of this application. These witnesses felt a new business would be good for the community and also felt there was no crime problems in the area and denied problems with gang bangers.

Abdelnassar Elkhatib is the president of the applicant corporation. He owns several buildings in the area including 2222 W. Devon. His family is active in the community and has operated Halal Meat and Groceries at 2243 W. Devon since 1991. He previously operated a restaurant at 2224-26 W. Devon called the Garden of Eden. While it has a liquor license it did not sell liquor. When he took over the restaurant he met with the Watch Commander to try to alleviate loitering around the restaurant. He will work with the Watch Commander with respect to this premise. The proposed store will be 70% grocery and he does not plan to sell miniatures or Colt 45. He does not believe this license will be a law enforcement problem because he has previously worked with the Commander. He has business and other properties in the area and an increase in noise or litter would hurt his renting apartments. He has not seen gang bangers at 2222 W. Devon and does not believe the area is filled with gang bangers.

This Commission must render individual decisions on each case based on evidence presented *de novo*. The issue is whether the issuance of this packaged goods license to this applicant at this location would cause an adverse effect on the value of any property, an increased risk of violations of the law, or a risk of substantial increase in noise, litter or vehicular congestion. While it is not essential for the City to prove its case by evidence from the District Police Commander as to crime in the location or the impact an additional liquor license will have on police resources, evidence of that type is certainly material to the questions of deleterious impact. In deciding these cases this Commission also looks for past history of crime in the area in general and any history of crime related to the applicant. The evidence of crime in the area was contradictory. Some of the witnesses describe an area overrun by crime and gang bangers

and some of the witnesses describe a location without any crime problems. The truth is probably somewhere in the middle. No evidence was presented as to any gang problems or loitering problems or littering problems existed on this applicant's operation of the Garden of Eden restaurant. No evidence was presented to show that the applicant is anything but a person who individually and with his family have a major investment in property and in businesses in this community. It would only harm himself and his family to operate a business in such a fashion as to cause a deleterious impact on the community.

There was evidence that the source of the petition in opposition to this license was an individual who owns what will be a competing liquor establishment. This Commission need not address that matter since evidence relevant to its determination was the actual testimony from the witnesses.

It was the City's burden to establish *de novo* by a preponderance of the evidence the propriety of the decision of the Local Liquor Control Commissioner denying this license at this location for deleterious impact. The City failed to meet this burden.

The denial of the Packaged Goods liquor 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: August 10, 2010

Dennis M. Fleming
Chairman

Stephen B. Schnorf
Member

Donald O'Connell
Member