

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

R.S. of Chicago, LLC)
Pera Odishoo, Managing Member)
Applicant (Late Hour))
for the premises located at) Case No. 07 LA 14
1009-11 North Rush Street)
)
v.)
)
Department of Business Affairs & Licensing)
Local Liquor Control Commission)
Mary Lou Eisenhauer, Acting Director)
)

ORDER

OPINION OF COMMISSIONER KOPPEL

This matter comes before the License Appeal Commission on an appeal of a decision by the Mayor's License Commission to deny the application for a late hour license to P.S. Chicago. The facts are as follows - Pera Odishoo currently operates P.S. Chicago at 1009 N. Rush Street. It has a tavern license and must close at 2:00 a.m. and 3:00 a.m. on Sunday mornings. He previously operated a place also called P.S. Chicago at 8 W. Division from 1978-1989. That location had a late hour license. The original location P.S. Chicago was never subject to any license revocation proceedings and the present P.S. Chicago has never received citations relating to underage drinking. It did pay a fine for a battery by an employee. His employees are all Basset trained and he attends CAPS meetings on a regular basis.

This application was denied because it would cause a deleterious impact and create a law enforcement problem. The City did not prove these allegations. There was no evidence that P.S. Chicago, as it exists now, causes a deleterious impact or causes law enforcement problems. Why should it be assumed it will now cause such problems if it gets a late hour license? There are already 73 late hour licenses in the 18th District and 13 or 14 in the nearby vicinity of P.S. Chicago. It is not sufficient to say that just by adding an additional late hour license P.S. Chicago will exacerbate any problems that exist. To deny a license on speculation is inappropriate. If there are existing problems it is the responsibility of law enforcement to monitor and control those problems. There are due process ways to close a bad place. To deny a late hour license on conjecture is improper. The City is reversed.

OPINION OF COMMISSIONER SCHNORF

While I agree with the factual summation of the witness testimony I respectfully disagree with Chairman Fleming and vote with Commissioner Koppel to reverse the decision of the Local Liquor Control Commission and order the late hour license be issued to P.S. Chicago.

In reviewing cases of this type, strong deference should be shown to testimony from elected officials and local police authorities as to whether the issuance of a license would contribute to a deleterious impact on the health, safety and welfare of a community or tend to cause a law enforcement problem. That deference must be balanced with the specific facts of each licensee's case. To do otherwise would be tantamount to relinquishing the authority of this Commission to the Alderman or the Police District Commander.

In many applicant cases the licensee is seeking a license for the first time. In those situations there is no history of operating a liquor establishment that can be looked at by this Commission. In cases like this where the applicant has a past history of operating a late hour licensed establishment in this same area in the past and present history of operating a 2:00 a.m. license in the establishment, it is relevant to look at the history of operation of those places. Just as it would seem reasonable for the City to be allowed to show a history of problems in running liquor establishments, a history devoid of problems must also be considered by this Commission.

The evidence in this record is that neither the former or present P.S. Chicago has a history of being charged with selling liquor to minor or over serving customers or any such violation of the State of Illinois Liquor Control Act or the Municipal Code of the City of Chicago. The only known violation related to a battery by an agent of the present P.S. Chicago, neither Lt. Walsh nor Alderman Reilly could attribute any of the present problems contributing to law enforcement problems or contributing to law enforcement problems or contributing to deleterious condition with respect to bars closing at 2:00 a.m. to P.S. Chicago. It is difficult for this Commissioner to assume such problems will automatically arise relating to P.S. Chicago if the late hour license is issues. Mr. Odishoo and Captain Seamans and Commander Pappas all testified to, without contradiction, the steps taken by P.S. Chicago to run its business without causing problems to its neighbors. None of the primary witnesses testifying in opposition directly connected the problems of noise, litter and other problems to P.S. Chicago.

The City also failed to prove issuance of this late hour license would tend to cause a law enforcement problem. Lieutenant Walsh testified to the fact that he has over 70 late hour licenses in the 18th District spanning the entire area of the 18th District. He opposes this additional late hour license at this location because of a general objection to more late hour licenses. His position is more late hour licenses equates to more intoxicated persons and then more calls for service which cause the law enforcement problem. The rationale does not apply in this case. There are already 13 or 14 late hour bars in the immediate vicinity of P.S. Chicago. While some may not use their late hour license everyday, a large number them do operate until 4:00 a.m. or 5:00 a.m. There are already people in the street and already police in the area aware of potential problems. With no history of problems arising from the operation of the past P.S. Chicago with a late hour license and the present P.S. Chicago with the 2:00 a.m. license, it is not reasonable to assume the late hour license for P.S. Chicago will contribute to a deleterious impact on the community or to cause a law enforcement problem.

You can argue that throwing a rock in the ocean raises sea levels around the world and be technically correct, but the effect will not be noticeable or observable in the normal sense of the words. That appears to be what we have here. There are already several late hour licenses in this area and this licensee is presently open until 2:00 a.m. The conclusion might very well be different if this was an application for a new license in a neighborhood that has none or if this was a late hour application in a neighborhood that currently has wine. In this specific set of circumstances it is not reasonable to expect the sea level to change in a noticeable way, either in the way of a deleterious impact or a law enforcement problem for the Chicago Police

Department.

I concur with Chairman Fleming that the City also failed to prove P.S. Chicago to obtain sufficient signatures to meet the citizen approval requirement. The decision of the Local Liquor Control Commission is reversed.

OPINION OF CHAIRMAN FLEMING IN DISSENT

Applicant filed an application for a late hour license for the premises located at 1009-11 North Rush Street, Chicago, Illinois. He currently operates a tavern at that address with a 2:00 a.m. closing time except for 3:00 a.m. closing on Saturdays. This application was initially rejected by the Local Liquor Control Commission on April 6, 2007, and an amended denial letter was issued on October 29, 2007. The first two bases for denial were that the issuance of this license would have a deleterious impact on the health, safety and welfare of the surrounding community and cause a law enforcement problem for the local police. A third basis for denial was based on the Local Liquor Control Commission's finding that the required number of signatures were not appropriately obtained and were tainted and, as a result thereof, the applicant failed to meet the citizen approval requirement. A timely notice of appeal was filed and this matter proceeded to a de novo hearing before the License Appeal Commission on May 6, 7, 20 and 21, 2008. As this case was filed prior to the amendment of the Municipal Code, the new provisions of the code are not applicable to this case.

With a de novo hearing, the issues to be decided by this Commission is whether the City has proved by a preponderance of the evidence any one of the three bases set forth to affirm the denial of this late hour license.

Witnesses from the community testified in favor of and in opposition to the issuance of the license. A summary of this evidence is appropriate.

Laura Werner has lived at 33 East Bellevue, an 11-unit building built in 1910 for twelve years. She lives there with her husband and three children aged 19, 16 and 11. She lives in a lovely tree-lined street full of hundred year old buildings that ends on one side of Oak Street Beach and The Drake and on the other side it ends with an alley that has vomit, condoms, rats, dirt and noise. Her unit shares an alley with P.S. Chicago and her children's bedrooms are about twenty feet from the back door of P.S. Chicago. She believes the neighborhood has spoken and she believes enough is enough and that allowing a premise to stay open until 4:00 a.m. or 5:00 a.m. is inviting disruptive people to drink in her neighborhood. She is regularly disrupted and calls the police regularly about people coming out of bars drunk and physically fighting or arguing enough to wake her up. This is an issue with all the places and it happens from 2:15 a.m. until 4:15 a.m. She hears noise from P.S. Chicago and hears them dump beer bottles at 2:00 a.m. every night. She feels the issuance of this license to P.S. Chicago would adversely affect her neighborhood. She did receive a copy of the letter in evidence as City Exhibit 6 from P.S. Chicago offering an inducement to sign a petition in its favor and she also received a phone call. She feels this would impact her quality of life. Ms. Werner on cross-examination stated she was

not familiar with any of P.S. Chicago's policies with regards to any facet of its business. She was not familiar with when P.S. Chicago dumps bottles in the alley and admitted it would be Jilly's that dumps the bottles but believes the noise she hears is from P.S. Chicago.

Gloria Reifler has lived at the 42nd floor of 1030 N. State with her husband for eight and a half years. She can see P.S. Chicago from her window as it is two short blocks away. She opposes the issuance of the late hour license because there is a definite increase on the noise level from people coming out of places and cars honking between 2:00 a.m. and 4:00 a.m. She does not hear it before 2:00 a.m. but the more 4:00 a.m. licenses in the neighborhood means more congestion and more loud people screaming to the point that she hears it on the 42nd floor. P.S. Chicago contacted her by a few letters and several calls. She felt intimidated by the calls. The witness also has seen valets, many of whom have said they work for P.S. Chicago and park the cars they valet at parking meters. One was rude and swore at her. On cross she said she had only one incident with a valet parker who said he worked with P.S. Chicago and that was one or two years ago. Since the valets park at the meters, her friends need to park in the expensive parking lots. She opposes only new 4:00 a.m. licenses. She is aware there is now a moratorium on 4:00 a.m. licenses which answers her concerns for the future but not this applicant. She identified Applicant's Exhibit 2, in evidence, as a letter she sent in opposition to P.S. Chicago. She stated P.S. Chicago offers no food but held itself out to be a restaurant in the letters she received as a registered voter. There are about one thousand people in her building. Her objection is to valet companies using the parking meters to park cars.

Wendy Huesser has lived a block and a half from the bar at 49 East Cedar for four years and in the Gold Coast area for twelve. She objects to the issuance of this license because as people leave the bars between 2:00 a.m. and 4:30 a.m., bottles are broken, loud arguments happen, cars are playing boom boxes and other kinds of music. The late hour already adversely affects her and her neighborhood and additional hours at this location will increase the situation. On cross the witness said she had never been to P.S. Chicago and does not know what the business values of P.S. Chicago are. She also admitted she could not attribute any of the problems she testified about to the specific operation of P.S. Chicago. The moratorium will effectively address her concerns about 4:00 a.m. licenses in the future.

Judith Sher has lived at 100 East Bellevue Place, Apartment 4 (b) for twenty-two years. The bar is located about a block and a half west of her residence. She is opposed to the issuance of this license due to all kinds of commotion in front of her building in the middle of the night. This happens after 12:30 a.m. or 1:00 a.m. in the middle of the night mainly on the weekends. The extra couple of hours just makes people nuts. They have enough to drink until 2:00 a.m. and then there is a lot of commotion outside. People talk, scream, yell and throw garbage. Cars are up and down the street. On cross, Ms. Sher indicated she objects only to the issuance of new 4:00 a.m. licenses. She knows of the moratorium and it does effectively address her concerns with regard to future late hour licenses. If one wants to drink after 2:00 a.m., do not do it in her neighborhood. She has never met anyone from P.S. Chicago and has no idea what its business policies are on how it monitors alcohol consumption on premises or whether it had ever been cited for liquor related violations.

Ruth Bradley has lived at 100 East Bellevue since 1995. It is a beautiful, sometimes quiet residential block. She is aware P.S. Chicago has applied for a late hour license from letters she has received and a woman knocking on her door with a petition in support of the license. She opposes the issuance because there is too much noise, especially on the weekend nights. People fight, are rowdy, rev up motorcycles, throw their beer bottles all over and throw up. An additional license for P.S. Chicago would augment that and make it worse. If the bar is a success, they'll have several hundred more people out later which means more noise, more chaos and more disturbance. She is aware of the moratorium but is in opposition to this specific license. On cross she repeated she likes the quality of life in the Gold Coast area but added she just does not like the rowdiness coming from the late hour liquor licenses. Late licenses have been in her neighborhood for the last 20 plus years and it's always been a problem. She does not know anyone who owns P.S. Chicago or who works at P.S. Chicago and she has never been to P.S. Chicago. She does not know the policies of P.S. Chicago but she hears the noise and sees the mess. The witness added it does not matter because P.S. Chicago will have no policy different from anybody else. She cannot specifically attribute any of the problems she testified about to P.S. Chicago but feels if a 4:00 a.m. license is issued there will be more people in the neighborhood; that there will be too much over drinking and it will be rowdy and noisy. She does not know which specific late hour license establishments are the problem but feels if a new bar opens up and has more people, there can only be more noise between 2:00 a.m. and 4:00 a.m.

Dana Plotain has lived at 33 East Bellevue for fourteen and a half years and lives there now with wife and daughter, who is a minor. He is very familiar with P.S. Chicago since the

rear of his unit abuts the alley adjacent to the P.S. Chicago building and his daughter's bedroom happens to be out back adjacent with the alley. He opposes the issuance of this license since there are between six to eight late night establishments within a couple of blocks. There is congestion that is almost impassable on the block in front of P.S. Chicago on Friday and Saturday nights. There are double and triple parkers on Rush Street between Clark and Bellevue. He feels the issuance of this license would lead to additional congestion, noise and the possibility of bad behavior from people drinking late at night on the streets. On cross, the witness said the Gold Coast is a high-density area. He does not know if P.S. Chicago employs a valet service and has never been to P.S. Chicago and does not know how it operates its business. He has no idea as to any particular facet of how P.S. Chicago runs its operation.

Brendan Reilly testified he is the Alderman of the 42nd Ward with the duty to represent the needs and concerns of his constituents while keeping in mind the business concerns and needs of downtown Chicago which is the hub of tourism and economic development for the city. The area where P.S. Chicago is located at 1009 North Rush Street is primarily residential with a number of hospitality and entertainment venues along the Rush Street corridor. He is opposed to the issuance of this license since there are no fewer than 16, 17 late hour liquor licenses within a quarter mile and a tremendous number of these licenses are in the 42nd Ward. The effect of issuing a late hour license to P.S. Chicago would have a deleterious impact on the neighborhood in terms of the tremendous amount of traffic congestion, being a burden on the residential permit parking and complaints related to drunken, disorderly behavior on streets. Alderman Reilly also believes the late hour licenses pose a substantial burden on law enforcement being able to cover

these establishments and ensure public safety. On cross, the Alderman added that the granting of this license to P.S. Chicago would serve to compound these existing problems because you are adding more inebriated patrons to residential areas between the hours of 2:00 a.m. and 4:00 a.m.

The Alderman added that there are issues with all the late hour establishments but was not prepared to single out any particular establishment or group of establishments primarily responsible for their patrons subsequent behavior. The drunken patrons are walking out of all these bars at 3 or 4 in the morning. The Alderman received the application by P.S. Chicago but did not meet with the applicant or review any security policies. He is not familiar with any of P.S. Chicago's specific policies. The Alderman was also aware of complaints from citizens about how P.S. Chicago was obtaining signatures on petitions. He was not aware over 700 registered voters within one thousand feet of P.S. Chicago signed petitions in support. Alderman Reilly acknowledged the existence of Gibson's, Tavern on Rush, Jilly's and Hugo's Frog Bar and could not say any of these establishments contribute to the existing problem and added it is an aggregate problem. On redirect, the Alderman stated the problem he had mentioned would be affected by the issuance of this specific license since it adds to the concentration of these late hour licenses in a small area and that serves to compound the problem.

Dennis Walsh testified he is a Chicago Police Lieutenant in charge of the Entertainment Venue Team in the 18th District. His unit is specifically responsible for the bars, restaurants and nightclubs in the 18th District. He appeared at the hearing on behalf of the 18th District Commander Steve Georges. He is familiar with the area where P.S. Chicago is located at 1009 N. Rush Street. It is an area with numerous bars and restaurants and some residential units. His

opinion and the opinion of the Commander is that the license should not be issued. He opined the midnight watch and his team's watch are overtaxed with calls for service for public intoxication and the crimes associated with it, as well as, the rest of crime that goes on in the district on a daily basis. This would tax them more. There are 73 late hour licenses in the 18th District. As it gets later in the evening, the calls for service go up but as it gets later after 2:00 a.m. and towards 4:00 a.m., 4:30 a.m. and 5:00 a.m., the amount of public intoxication gets greater. The later the bars are open, the more public intoxication there is. They are backlogged with calls for service from midnight to 5:30 a.m. on a Sunday morning. The issuance of this license would negatively impact the neighborhood community and cause a law enforcement problem for his district. On cross, Lt. Walsh added he has not met with anyone from P.S. Chicago and is not aware of its policies in security or over-service of customers. P.S. Chicago has been in operation at least over one year and has not been a source of law enforcement problems and has operated within the confines of the law. Lt. Walsh has three sergeants and about 40 officers on his team handling calls for service at liquor establishments throughout the 18th District. Crews are assigned through the district to Rush Street, Division Street, Lincoln Avenue, Hubbard Street, Erie, Franklin and Kinzie or Kingsbury. He also is in charge of an additional 40 officers responsible for burglaries, theft from autos and other public nuisance crimes. The P.S. Chicago area is primarily commercial and is a high density area in terms of tourists and people out in the evening. Lt. Walsh did not state a specific problem establishment because problems happen when customers leave places after being over-served. His opinion is that the more late hour places there are, the more work it puts on the police department. The problems are not when people are inside the establishments since most places handle it to the

best of their ability. The problems arise when the patrons are released onto the street. Lt. Walsh added he does assign officers from his team to the area within a half mile of P.S. Chicago. He is now aware of the moratorium but that does not solve his problems completely since the 18th District extends into other wards. Lt. Walsh repeated he has no specific objection to P.S. Chicago or its owners or its manner of conducting business, but his opposition is based that there are currently 73 late hour licenses in his district and the more late hour licenses, the more stress it will put on calls for service and manpower needs. 40% of the late hour bars in the city are in the 18th District.

Nicholas Knorr has lived at 100 East Bellevue for two and a half years. He is opposed to the issuance of this license since he does not feel he and his wife should be subjected to disturbances occurring late at night caused by patrons of late hour establishments. The people on the street around the time the 4:00 a.m. bars close are quarrelsome, noisy, arguing and yelling. A late hour license to P.S. Chicago would add to this burden. On cross, Mr. Knorr admitted he has never been to P.S. Chicago as a patron and has never spoken to its owner and does not know anything about its business practices. Mr. Knorr feels there is a correlation with the problems he noted and the late hour licenses since the problems happen at 4:00 a.m. or later. He is basically opposed to 4:00 a.m. licenses.

Pera Odishoo was called as an adverse witness by the City. He has been involved with the original P.S. Chicago, with Shenanigan's, Mother's and a place now called McCool's. He had licenses in his name at Mother's, at the original P.S. Chicago and currently has licenses at

Coyote Ugly and P.S. Chicago. He is the sole operator of P.S. Chicago which is open from 8:00 p.m. until 2:00 a.m. and 3:00 a.m. on Saturdays. He is present from 15 to 20 hours a week on the low end and up to 40 to 50 hours on the high end both day and night. P.S. Chicago has music by DJ or by cd's and has an older clientele. His occupancy is 300 and occupancy is timed over on Friday's one and a half times and on Saturday two and a half times. There are about a hundred people leaving on a Friday night. If this license is issued it would be open late on Fridays and Saturdays and possibly the nights of a holiday and the rest would depend on the market and customer base. He is considering food because it could help with older customers but does not currently serve food. A late hour license would make the business more marketable but he has no current plans to sell. It would be a 10 to 25 percent revenue increase. The customers would come from people in the industry after work and he would expect the same number of people at 4:00 a.m. His people monitor the crowd at closing and clean up the area. They are instructed to get cabs for people that need them. His employees do not dump bottles in dumpsters at closing. Garbage sits overnight in plastic dumpsters and bags. City's Exhibits 7 and 8, are letters sent to residents seeking support for this late hour license. He paid people to pass petitions and offered to have people come by.

Arthur Jeary has lived at 33 East Bellevue, Apartment 5 West for fourteen years. It is across the alley from P.S. Chicago. He opposes the issuance of this license because it will add to late night and early morning noise due to the dumping of loads of bottles into the dumpster. At closing of the 2:00 a.m. bars he hears boisterous patrons conversing loudly and sometimes swearing. This goes on for an hour. If P.S. Chicago is open until 4:00 a.m. there will be another

hour of racket until 5:00 a.m. and then he will have an hour of peace and quiet until the trash trucks start. He is opposed because he does not want to give up a couple of hours of peace. On cross, Mr. Jeary admitted he paid \$700,000 for his unit fourteen years ago and it's now worth about \$1.6 million. He is familiar with a number of 4:00 a.m. establishments but added most do not use them. He does not know who uses the dumpster that is loud and does not know if P.S. Chicago uses a process to crush bottles before disposal. He has never gone to P.S. Chicago to discuss any concerns over how its business is being operated.

Richard Mandel and his wife have lived at 49 East Cedar for 23 years. He opposes the issuance of this license because patrons come out of the late night tavern at 2, 3 or 4 in the morning. They talk loud, sing and are noisy. A license to P.S. Chicago will increase the number of patrons out there. On cross, the witness stated he had talked to a previous witness before testifying. He has not had contact with anyone from P.S. Chicago. He has been in the bar one time and it was a loud, boisterous place.

John Pappas is presently Director of Security for the CME Group/Chicago Board of Trade building and was a Chicago Police Officer for 31 years. He retired as a Commander and specifically served as Commander of the 25th District for three years and one year as Commander of the 17th District. He left the Chicago Police Department in 1999. As Commander of these districts he dealt with community complaints on liquor establishments. He has his own district personnel and could seek assistance from outside sources like the Vice Control Division to address these problems. He also worked with the Law Department. He felt these tools were

adequate to address any problems with liquor license establishments. In preparation for this testimony he reviewed Appellant's Exhibit 3, which dealt with reported crimes at the location and area in question for 2006. It was for the address at 1009 N. Rush Street, which is a multiple establishment address and it is not for P.S. Chicago exclusively. The document shows two incidents but they do not seem to relate to P.S. Chicago. He also reviewed Applicant's Exhibit 4, which was a reported crime document for the last week in April and first week of May, 2007, for Beat 1824, the beat where P.S. Chicago is located. There were 30 reported incidents and 11 of the 30 occurred during the times P.S. Chicago was open. Several of these were street stop like arrests in alleys, on the streets and for narcotics. His opinion is that this beat is well patrolled by the police who are out there in numbers on patrols and on foot. Mr. Pappas also visited P.S. Chicago on Tuesday, April 29, 2008, on Friday, May 9, 2008 and on Saturday, May 17, 2008. On both occasions he observed the carding procedure, the demeanor of and the professionalism of the security staff, the demographics of the patrons and whether the customers were inebriated. He also observed the police presence in the area. He also went out to the area of the building to check for noise. It is his opinion there are no law enforcement issues associated with P.S. Chicago and his further opinion is that the issuance of this late hour license would not result in an increase on calls for police service and would not have any kind of deleterious impact for the surrounding community. On cross, Mr. Pappas stated he was being paid \$140.00 an hour for his security consulting and had spent between 10 and 12 hours on this matter. He repeated he has not worked for the Chicago Police Department since 1999 and is not aware of current practices and procedures in the 18th District. He did review a report on late hour license and counted 11 or 12 on Beat 1824. There are 68 in total in the 18th District. His

visits to P.S. Chicago were not done at closing. He is aware the Commander has objected to the issuance of this license. He never worked as Commander of the 18th District and does not know how many officers work at the 18th District or how many work Beat 1824. With respect to late liquor establishments in the 25th District that he had objected to there were complaints of noise, littering, fighting and traffic problems and he did consider those problems as deleterious impact on the community. He did not interview any nearby residents in the community. He does not know the kind of behavior exhibited by patrons as they left P.S. Chicago on the nights he was present and does not know the amount of police presence at 1009 N. Rush Street at closing on those nights.

John Seamans is president of a security management consulting business. He previously spent 28 years as a Chicago Police Officer who retired with the rank of captain and the position of watch commander. He was retained to render his opinion on this matter and is billing \$140.00 an hour for his time. He was hired to review security for P.S. Chicago and to render an opinion as to issues with police and neighbors. He reviewed the deleterious impact ordinance. He personally went to P.S. Chicago on May 9, 15, and 19, 2008. He made observations on the security people's demeanor and presentation, the demographics of the crowd, the carding procedures and whether the patrons were intoxicated. John Pappas was present for a period of time on May 9, 2008. He did not observe any patrons exhibiting intoxicated or unruly behavior and did observe that there was good security and communication between the employees. He did observe police personnel in the area including tactical officers on one of the dates and patrol and foot officers. He saw Lieutenant Walsh on May 9. He also checked the alley behind P.S.

Chicago and with the door closed to P.S. Chicago he could not hear music from P.S. Chicago. He did hear music from another location. On the May 19, 2008, visit he arrived at 12:15 a.m. to observe last call. Last call was announced at 1:35 a.m. by the DJ over the PA system and five minutes after the announcement the lights went up. There was no service at that time and by 1:55 a.m. the place was empty. He was the last patron to leave. He did not see any unruly behavior on Rush Street but he did see a police officer 50 feet north on the east side of Rush Street. It is his opinion that P.S. Chicago is well maintained and managed and the issuance of a late hour license would not pose and/or create a deleterious impact on the surrounding neighborhood. This is based on the applicant's past record and its cooperation with the police attending the CAPS meeting. On cross, the witness admitted he did not know how many officers work with the 18th District between 2:00 a.m. and 4:00 a.m. and does not know how many late hour licenses are in the 18th District. As a police officer, he dealt with citizens with concerns of noise, loitering, fighting and public intoxication coming from licensed establishments. Those matters would be a detriment to the community. He is aware that community members and the District Commander have objected to the issuance of this license and that does not change his opinion. On the three nights he visited P.S. Chicago he did not see a single intoxicated person in the establishment or on Rush Street. The witness on re-cross did admit that the Commander of the 18th District should be the best person to testify regarding law enforcement concerns in the district.

Pera Odishoo currently is involved in the operation of P.S. Chicago at 1009 N. Rush Street. It has a tavern license. He also owned another establishment called P.S. Chicago at 8 W. Division from 1978 through 1989. That business never was subject to liquor license revocation proceedings. He and his doormen target an older age group and look to target conventioners and tourists with the bulk of his business being walk-ins that live in the neighborhood. 80% of his customers are "walk-ins" meaning they are on Rush Street. He has a minimum of four security people working up to eight or nine people. Security runs last call which starts one half hour before closing. They change the music, put up lights and stop serving. Security stands to ensure people leave in a quiet manner and to help customers get cabs. Then the bus boys go out and start sweeping the area. He has never received a complaint from residents, police or the alderman regarding existing employees or customers. His staff is directed to card anyone that looks 30 and younger. On busy nights he has a secondary person carding to ensure no one has slipped money to gain entrance and to recheck the really young looking patrons. P.S. Chicago has never received a citation relating to underage drinking. There are video security cameras currently being installed. There will be an electronic ID card scanner that verifies if it is a real ID and will be able to check if that ID had been previously used that evening. His employees are "Basset" trained to assist in dealing with the over-serving problems. He regularly attends the CAPS meetings held the first Thursday of the month at Shenanigan's at 3:00 p.m. and has attended the CAPS meetings since 2005. P.S. Chicago has never been a subject of community objection or concern at any of these CAPS meetings. Garbage is disposed of between 10:00 a.m. and 11:00 a.m. and his employees are not allowed to dump garbage at night. P.S. Chicago has never been ticketed with regard to maintenance of his garbage dumpsters. They use a bottle

crusher to disintegrate all glass products being disposed. There is no noise from bottles of P.S. Chicago being disposed of because they do not dispose of bottles. His employees on the 8:00 p.m. to 2:00 a.m. shift are not allowed in the back way and in the alley. He has never been approached by any resident with complaints of late night dumping or complaints of music coming from P.S. Chicago. It was only after he started this application process that he became aware of these complaints. He went to his neighbors at Jilly's, Jilly's II and the Back Room and told them that P.S. Chicago was being blamed for things they were doing. The garbage disposal practices have changed. He obtained the necessary signatures from registered voters and also obtained 700 signatures in support from people within 1,000 feet. On cross, Mr. Odishoo agreed he had become aware that certain members of the community objected to the issuance of this license. He became aware former Governor Thompson had written a letter in opposition to the issuance of this license. He expects to handle last call one half hour before closing if issued the late hour license.

In addition to Mr. Odishoo, Captain Seamans and Commander Pappas, the applicant presented in the area of twenty secondary witnesses who stated their support for the issuance of this license.

The denial letter amended on October 29, 2007, alleges that while the number of the signatures on the petitions met the requirements of the ordinance the signatures were tainted and not appropriately obtained. As such the applicant did not meet a burden that it has clearly met the citizen approval requirement. While there was testimony at the hearing concerning the

\$100.00 drink credit and testimony from some witnesses that they took advantage of the offer that testimony would be insufficient to establish that the entire petition process was tainted. This allegation does not reference a section of the Municipal Code on which denial on this basis can be premised. There is no reference to a section of the Municipal Code that prevents such an offer to be made. Clearly the denial of the late hour license on this basis was improper.

A second basis for denial of this license was the allegation that the issuance of this license would have a deleterious impact on the health, safety and welfare of the surrounding community. As mentioned earlier the provisions and definitions of deleterious impact set out in the amended ordinance are not applicable to this case since it was filed prior to the passage of this amended ordinance. It is important to note that while a moratorium on future late hour licenses has been passed, this Commissioner does not view that fact as substantive evidence that the issuance of this license would go against the wishes of the community and automatically have a deleterious impact. This application was started prior to the implementation of that moratorium. Secondly, there has been mention of letters sent to the Local Liquor Control Commission in opposition to this license. Those letters are not substantive evidence on any of the issues before this Commission.

The Gold Coast area of the city of Chicago is one of our city's unique neighborhoods. Its lovely tree lined streets adorned with landmark homes abut Rush Street, one of the entertainment meccas in the city. This is going to cause conflict between some residents of the Gold Coast and the patrons of the Rush Street establishments. In analyzing the issues of what impact the issuance

of this late hour license would have on the health, safety and welfare of the community and on law enforcement, one must first address the present status of the community with respect to these issues.

Testimony from the primary witnesses in opposition to the issuance of the license described conditions of increased noise, litter, increased traffic, fighting and public intoxication occurring in their neighborhood. The evidence from those witnesses did not identify to P.S. Chicago as the source of these problems but did tie them to the closing times of the Rush Street bars. The problems arise at the close of the 2:00 a.m. bars and again at the close of the 4:00 a.m. bars. That these types of problems cause a deleterious impact on a community was admitted by two of the licensee's witnesses John Pappas and John Seamans. The evidence in this case proved by a preponderance of the evidence that the pre-existing problems in this neighborhood would be exacerbated by the issuance of this license. Under the cases of Ace Produce, Inc. v. Illinois Liquor Control Commission, 93 Ill. App.3d 381, 417 N.E.2d 214 (1981) and M.J. Ontario, Inc. v. Richard M. Daley, et al, 01-04-2249 (1st District, 6th Division) the evidence presented in this case was the type sufficient to rule the City has met its burden. While the evidence was not site specific to P.S. Chicago and while P.S. Chicago's past history of operation is a good one, the evidence addresses the immediate area of the neighborhood next to P.S. Chicago which was proper because the issue is whether the issuance of this license would cause a deleterious impact to the health, safety and welfare of the applicant's community. The evidence here was not speculative but was the personal observations of the neighborhood residents, Alderman Reilly and Lieutenant Walsh.

The City also proved by a preponderance of the evidence that the issuance of this late hour license would cause a law enforcement problem for the local police. Lieutenant Walsh is the supervising officer in the 18th District for the entertainment areas of the district. This district has over 70 late hour licenses in various locations. The late hour licenses are not just located on Rush Street. It is his professional opinion that allowing another late hour license at this location will cause a law enforcement problem. His opinion is that his team as well as the officers on the midnight watch are presently overwhelmed with calls for service and another late hour license would tax them more. As the evening gets late, calls for service go up but as it reaches 4:00 a.m., 4:30 a.m. and 5:00 a.m., with a greater amount of public intoxication, the number of calls go up. While Lt. Walsh acknowledged he has no problems with P.S. Chicago he stated the problems arise when the over served patrons leave the establishments. His opinion is that the more late hour places open, the more work it puts on the police department. He opposes issuance of anymore late hour licenses in general, not just this application. This Commissioner feels the premise set out in the Ace Product and M.J. Ontario cases on deleterious impact applies to the question of a law enforcement problem. The evidence need not be that P.S. Chicago itself is causing a specific law enforcement. It is sufficient that the issuance of this additional late hour license will contribute to law enforcement problems in the surrounding community. The licensee presented two expert ex-Chicago Police supervisors who opined the issuance of this license would not cause a law enforcement problem. The fact is that neither witness is familiar with the day to day and night to night operation of the 18th District and Captain Seamans acknowledged it was the Commander of the 18th District who would be the best person to testify to law enforcement concerns as the 18th District. Commander Georges opposes the issuance of

this late hour license.

Based on these opinions I would affirm the decision of the Local Liquor Control Commission to deny the issuance of the late hour license to P.S. Chicago.

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 28, 2008

Dennis M. Fleming
Chairman – In Dissent

Irving J. Koppel
Member

Stephen B. Schnorf
Member

