

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

9444 S. Lafayette, Inc.)
d/b/a Red Line Pantry)
Applicant (Package Goods))
for the premises located at)
9444 South Lafayette Avenue) Case No. 17 LA 14
)
v.)
)
Department of Business Affairs and Consumer Protection)
Local Liquor Control Commission)
Shannon Trotter, Commissioner)

ORDER

DECISION OF COMMISSIONERS O’CONNELL AND CRONIN CAHILL

On June 18, 2017, Local Liquor Control Commissioner Shannon Trotter notified 9444 S. Lafayette, Inc. that its application for a Package Goods liquor license had been denied for the following reasons:

1. Deleterious impact issues raised by strenuous objections from the 21st Ward Alderman and local community.
2. Law enforcement concerns of the 6th District Police Commander.

This letter advised the Applicant it had 20 days from the date of denial to devise and submit a Plan of Operation to the Commissioner of the Local Liquor Control Commission. It further advised the plan must provide reasonable assurance that the issuance of the liquor license will not have a deleterious impact on the surrounding community.

Pursuant to Chicago Municipal Code 4-60-040(h), the Applicant timely filed a Plan of Operation with the Local Liquor Control Commissioner.

On July 28, 2017, Local Liquor Control Commissioner Shannon Trotter entered a final denial letter which set out two reasons for the denial of the application for a Packaged Goods liquor license:

1. Deleterious impact issues raised by the strenuous objections from the 21st Ward Alderman and local community.
2. Law enforcement concerns of the 6th District Police Commander.

This letter quoted Section 4-60-040 (h) of the Chicago Municipal Code which states:

The Local Liquor Control Commissioner shall deny an application if the applicant fails to satisfy the requirements of this chapter, and may deny an application for a city liquor dealer's license if the issuance of such license would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located.

It added that the Plan of Operation had been reviewed and was disapproved because it does not provide adequate assurance that the issuance of a liquor license will not have a Deleterious Impact on the surrounding community.

A timely Notice of Appeal was filed on August 10, 2017. This matter proceeded to hearing on November 1, 2017.

RELEVANT ORDINANCES/DEFINITIONS

- 4-60-010 “Deleterious Impact” means 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.
- 4-60-040(h) The Local Liquor Control Commissioner...may deny an application for a city liquor dealer’s license if the issuance of this license would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located. A deleterious impact is presumed to exist whenever there have been a substantial number of arrests within 500 feet of the applicant’s premises (measured from the nearest exterior wall of the premises) within the previous two years, unless the applicant has adopted a plan of operation that will provide reasonable assurances that the issuance of the license will not have a deleterious impact.

SUMMARY OF PROCEEDINGS

William Bradley has been with the Chicago Police Department since November 22, 1993, and has been the Commander of the Sixth District for about a year and a month. His job as Commander is to oversee all operations in the district such as crime suppression and community engagement. 9444 S. Lafayette is within the 6th District. That area is close to the Red Line with a lot of foot traffic. There is a McDonald’s and other establishments and is close to the Linthrop Home which is a scattered site housing project. The crime in that area is violent and up compared to other spots in the district. Resources are dedicated there on a daily basis to ensure the citizens have a good quality of life. He is aware a business called Red Line Pantry filed an application for a Package Goods license at 9444 S. Lafayette and his opinion is that the license should not be issued.

He opposes the issuance of the license because of crime issues in that area. There is another establishment, Sammy Brothers, with a similar license in close proximity. The culture it creates

puts a draw on his resources by attracting people who frequent that establishment and people who prey on them. More resources are put there to prevent crime or address crime issues. There is a pod camera at the Sammy Brothers location but still, in the last six months in that area, he has had 4 murders, 6 shootings, 24 robberies, 18 burglaries, and over 1800 calls for service. It is an area that is a challenge for him and his resources. He submitted his opposition in writing and identified City's Exhibit 5 as the letter of opposition.

The Commander identified City Exhibits 6 and 7 as memos reflecting crime statistics. Exhibit 7 captures crime within 1,000 feet of the Applicant premises which showed 1 murder, 3 shootings, 7 robberies, 4 aggravated batteries, 3 burglaries, and 146 calls for service in the timeframe from January 1 through May 11, 2017. The witness identified City's Exhibit 8 as a bigger map shot of the area which captured statistics from June 2017 to October 31, 2017. It shows over 1800 calls for service and details 4 murders, 6 shootings, 24 robberies, and 18 burglaries. The Commander explained this data demands that he devote resources there daily as opposed to other areas not as violent. He has the resources to provide law enforcement if the package goods license issues but it would be a drain on his resource and he would need to devote more resources.

The Commander reviewed a Plan of Operation that was submitted after the initial denial letter. That plan did not alleviate his concerns and he believes that the issuance of this liquor license would negatively impact the neighboring community by the crime conditions it would create. He already has one establishment and another one would continue to feed the problem. He is not opposed to all liquor in the district, just the issuance of this license. The issuance of this license would be a law enforcement problem for the district.

On cross, the Commander stated the 1,000 feet radius was measured in a 1,000-foot radius from 9444 S. Lafayette. He could not state if any of the crimes that occurred in the radius occurred at 9444 S. Lafayette or if the homicide was related to the sale of liquor. He did feel the culture that package goods licenses create contributes to the crime. The Commander did not have the individual statistics for any of the incidents and it was possible they were not liquor related. It was also possible some of these crimes might have been committed by CTA passengers from the Red Line. The Commander did not bring the particular information for the 146 calls for service although that information was available from the Chicago Police Department. The witness agreed that a call for service does not mean a crime was committed or that an arrest was made. The Commander stated based on his experience that alcohol is a contributing factor to the crime in that area but did not bring any evidence that any of the 3 shootings, 146 calls for service, 7 robberies, 4 aggravated batteries, 3 burglaries, and 1 homicide dealt with the sale of alcohol. He admitted also he had no evidence any of these crimes had anything to do with the Sammy Brothers location.

City Exhibit 8 contains a square boundary and an oval boundary. The oval area is the one in which the 4 murders, 6 shootings, 24 robberies, 18 burglaries, and 1858 calls for service were documented. That area was estimated to be within a half mile to the west of the Applicant location. The witness had no stats with him to say whether any of those incidents had anything to do with the sale of alcohol. One of the murders occurred outside of Sammy Brothers and the Commander felt a contributing factor to that murder is that it is a place where people like to congregate.

The Commander repeated he is not opposed to all package good stores in the 6th District and explained he would not object if any applicant was not going to be a drain on his resources. He was not the Commander when Sammy Brothers received a liquor license. The witness understood this applicant would operate a convenience store as opposed to a liquor store only. His objection to a liquor store would depend on the location. The 6th District has the third highest level of violence in the city but the witness denied any application location for a package goods license would have problems within 1,000 foot or half-mile distance.

There are package goods liquor licenses operating in the 6th District but the Commander would need an analysis to opine if they all contribute to an increase in crime in the district. Some operate in a manner more responsible than others. The witness did agree that a liquor store that stays open would cause more police issues as opposed to a liquor store that was closed.

The Commander did not meet or speak with the Applicant about the liquor license. He was not aware if the Applicant tried to have a conversation about the liquor license. He did speak with the Alderman and residents at a CAPS Meeting. The Alderman contacted him but did not tell the Commander to object to the license.

Commander Bradley stated he did review the Plan of Operation but could not remember exactly when he saw it. It is his opinion that he would still not support this license with the conditions the Applicant agreed to impose on the business. The fact the Applicant agreed to close earlier than allowed by the Municipal Code did not change his opinion. Closing early might assist with police issues and burdens on resources just like it would assist him if the license did not exist.

The fact that the Applicant would not sell fortified wines and other such products would not have an impact on police issues and police resources. None of the other proposed actions set out in the Plan of Operation would change his opinion.

The Commander testified that while he has not inspected Sammy Brothers, he assumes it sells fortified wines and special brews. Part of the problem with Sammy Brothers is that it might sell certain items that would cause problems in the district.

On redirect, the Commander repeated that even if the Applicant chose not to sell the items listed in the Plan of Operation it would still cause a problem for the department. From his perspective, the issuance of a package goods license at this location would exacerbate the crime numbers. The drain of police resources was particular to this location. He explained crime in this area comes as early as 9:00 am and continues to the wee hours of the morning. Closing at an earlier hour would not alleviate his law enforcement concerns.

On re-cross, the Commander restated his thought that the culture a liquor store creates and people that it draws creates the conditions for the crimes that occur. He could not give a direct nexus without reviewing the stats but the culture the liquor store creates definitely contributes to the crime in that area. He added that closing at midnight would alleviate crime after midnight but not the crime problems before midnight.

Howard Brookins is the Alderman of the 21st Ward and the Red Line Pantry at 9444 S. Lafayette is in the 21st Ward. It is located at the end of the Red Line at 95th and the Dan Ryan and is in a

commercial area. He is aware Red Line Pantry has applied for a Package Goods liquor license and he opposes the issuance of this license. He believes it would have a deleterious impact on the community. There is a liquor store within 1,000 feet with frequent loitering and where a shooting occurred in the past six months. There is frequent loitering on 95th and Lafayette. There is significant trash in the area and complaints of people urinating in the alleys and of significant panhandling. People ride the CTA back and forth with no place to go; they could get off the line and get liquor and potentially go back to the CTA inebriated.

Residents reached out and obtained a petition in opposition with about 200 names from people who lived in and around that particular area. The Alderman identified City Exhibit 9 as a Letter of Opposition he sent to Commissioner Trotter, City Exhibit 10 as a Letter of Opposition dated May 30, 2017, to Chairman Fleming, and City Exhibit 11 as a Letter of Opposition dated October 31, 2017, to Chairman Fleming.

Alderman Brookins stated the proposed Plan of Operation did not address the concerns of the community. With McDonald's right now there is still significant loitering, significant panhandling, and significant complaints of people urinating in the alley. While the address of the location is on Lafayette it is really an alley in an east-west direction. The physical location of this particular liquor store, coupled with it being in close proximity to another liquor store, makes it so nothing could be done to address the issues that would arise from additional liquor in that area. He believes that the issuance of a liquor license to Red Line Pantry would have a deleterious impact on the health, safety and welfare of the surrounding community because of panhandling, public indecency, public intoxication, and significant litter in the area.

Alderman Brookins testified he had not had any communications with any members of the panel other than letters sent that are in the record. He added he had never testified before the Commission before and never discussed any case and in particular this case. He sent a letter because he did not know if he would be available for the hearing.

On cross-examination, Alderman Brookins agreed he sent a letter on May 30, 2017, to the Liquor Commissioner objecting to the license. He wanted his objection to be out there for his constituents. The Alderman agreed zoning in this address allows a package goods license and that there is no moratorium of such licenses at this address. The area has not been voted dry. There were tools that could have been taken to prevent a package goods license from coming in. He was not the Alderman of the 21st Ward when the license was issued to Sammy Brothers which is within 500 feet of this proposed location. He became Alderman in 2003 and that location was a liquor store. In 2012, there was a change of ownership to which the community did not object. The people in that precinct did not object while others across the street did object. He supported the people who lived in the precinct and did not oppose the continuation of a license at that particular location. The fact this other liquor establishment is less than 500 feet from the Applicant location in the same community is why it is a problem.

The witness never spoke with the Liquor Commissioner about this license or about the Plan of Operation. A Plan of Operation was sent to his office but he did not know who sent it or when it was sent. It is his opinion that even if the Applicant operated under this Plan of Operation it would not change his mind. He feels the litter would blow all over the expressway and the ramp and around the corner. It might be picked up in front of the store but what about the front of

people who live on the block. It is not the particular establishment but the people who frequent that type of establishment in that particular location. While the Applicant promises to work with the Alderman and the Police, that appeared to the witness to be disingenuous since the Applicant did not give the Alderman a heads up. He met with the Alderman only after the Alderman's objections were known. If contacted, the witness would have convened a community meeting and if the community approved, he would have been for the license. The Alderman stated he has no general objections to liquor stores coming into the ward. This particular location that appears to be an alley near the CTA Red Line is already a significant trouble spot in the 21st Ward. The community is objecting to this license.

The Alderman agreed he could have called a community meeting after the Plan of Operation was issued but he did not do so.

On redirect, the Alderman repeated the Plan of Operation did not adequately address the community's concerns. The other liquor store within 500 feet is a significant problem with trash and panhandling. There is dirt, trash, debris flying everywhere and people urinating in the street. The Applicant currently operates a sausage or food pantry and has not done anything to address these issues.

There were a number of witnesses from the community who came to the hearing. For brevity, the witnesses were divided into primary and secondary witnesses. Primary witnesses would testify in more detail than the secondary witnesses. These were the secondary witnesses and the reason they are opposed to the issuance of this license:

| <u>Secondary Witness Name</u> | <u>Reason</u> |
|-------------------------------|--|
| • Shirley Robertson | Safety of children |
| • Sarah Carter | Safety of the community and children walking to school |
| • Nicole Sims | Safety of the community |
| • Jatoya Sims | Bad traffic already |
| • Verna Gray Jones | Loitering |
| • Ruby Holt | Negativity to the community |
| • Angela Lampkin | Negative traffic |
| • Rev. Alice Harper Jones | Morally wrong |
| • Marvin McNeil | Prevalence of crime, risk of more crime |
| • Bree Lampkin | Safety of the young people |
| • Curtis Smith | A lot of crime in the area |
| • Sharlene Baker | Loitering, littering, urination |
| • Christopher Swann | Trash, loitering |
| • Polly Clark | Seniors in the area |
| • Wanda Swann | More traffic and littering |

Herbert Lee, Jr., testified as a primary witness. He is Pastor of the New Progressive Missionary Baptist Church which is located a couple of houses down from the establishment in question.

There is crime in that area and numerous people hanging out. There is a liquor store open that is a thorn in everybody's flesh with the loitering and beer bottles on the parkway. He believes the issuance of a package goods license will negatively affect the community.

On cross, the witness stated he was not aware if the church had any meetings to address this package goods license application. Members of the church talked about it and a lot opposed to

it. The church members never met with the Applicant but members of the block club met with the Alderman. He never met with the Alderman. He has never seen a Plan of Operation.

Nadine Griffin was another primary witness. She lives four and a half blocks from 9444 S. Lafayette and frequents that area because she belongs to the church at 93rd and Wentworth. The area on Lafayette is residential with pedestrian and vehicle traffic. She opposes the issuance of this package goods license. This is a heavy traffic area which would be affected greatly by the issuance of this license. She believes the issuance of this license would negatively affect the neighborhood. People are afraid of the ugly pedestrian traffic in the area 24/7. These pedestrians are doing illegitimate things like drugs and prostitution. If this location agreed to limit its hours of operation or some of the items it sold that would not change her opinion.

On cross, the witness stated she had a general objection to the sale of liquor in her community because it does not need more liquors. She personally objects to the idea of any liquor stores in her community. She feels this liquor license would impact traffic on 95th because of the Red Line and the Dan Ryan. The 95th Street corridor is very busy. She has never seen a Plan of Operation but nothing could be done to change her opinion. Absolutely no liquor, period.

Cornell Swann has lived at 9440 S. Perry for twenty years. That is about 150 feet from the Applicant premises. He is in a block club, involved in his church, and attends CAPS meetings. There is a McDonald's, a restaurant, and a Family Dollar Store in the area. There is a lot of pedestrian traffic coming from the Red Line and from people hanging out in that area. There are schools in the area and vehicle traffic also. He opposes this license because of the type of traffic

in the area. People are hanging out and there is drug trafficking. People are fixing their cars in a lot adjacent to the store. This liquor license will draw more people in the neighborhood or outside the neighborhood to be hanging around the neighborhood. It will cause more traffic and more trash.

On cross, the witness repeated there are people from the other liquor store standing on the corner drinking liquor. Transient people come off the Red Line to buy their liquor. They finish drinking and drop their trash. He admitted he has an objection to the issuance of any liquor license within his neighborhood. The witness agreed that these conditions already exist without this license being issued but that another liquor license will multiply it. This license would get more of the same people. He was never shown a Plan of Operation and no one spoke to him about the application. He met with the Alderman and submitted petitions in opposition to the Alderman. Reducing business hours, restricting inventory, installing lighting or attending CAPS meetings would not make a difference because this business will bring in the clientele he does not want.

Bryant Lampkin, Sr., has lived at 9426 S. Perry for twenty-two years and has lived in the neighborhood for forty-five years. He lives about six houses from 9444 S. Lafayette where Maxwell Jew Town and a store is currently located. He opposed the issuance of this liquor license. The existing liquor store at 94th and LaSalle has panhandling, people hanging out, excessive trash and violence. It would be detrimental to have a second store in that area. People from the existing store are now hanging out on Perry from 6:30 am until 7:00 in the evening. This is walking distance from this business. The issuance of this license will negatively affect

what is already going on. There was a murder on 95th Street and in the summer they were selling crack and marijuana and putting women in cars. This is by the building where Red Line Pantry is located. There is crime in that particular alley.

On cross, Mr. Lampkin explained the alley near the Applicant premises is dark which aids the criminal elements that conduct activities and added those things go on all day. He does not feel exterior lighting or security cameras or stationing an armed guard would mitigate those problems. He admitted to a general objection to the granting of any liquor license in his community but there are specific factors that lead him to object to this license. There is an empty lot with people selling marijuana, cocaine and selling people. You are going to add to the volume of what's going on by bringing on people who want to buy liquor. There is a Family Dollar and another store that just opened up that sell chips, pop, and juice. People would come to this establishment to buy alcohol. That is based on his experiences with the liquor store at 95th and LaSalle. The witness was not aware of a change of officers application for that 95th and LaSalle liquor establishment. He was not familiar with the proposed Plan of Operation submitted by the Applicant.

On redirect, after he was given time to read the proposed Plan of Operation, the witness stated the plan did not alleviate his concerns about this liquor license application.

Jan Jerzabek is 37 years old, lives in Worth, Illinois and is currently a cook at Beef Chief which is his restaurant at 9447 S. Lafayette. It is a restaurant that sells polish sausage. In 2017, he applied for a food license, a package goods license and a tobacco license for the premises located

at 9444 S. Lafayette. The tobacco and food license licenses were granted. His liquor license application was approved by zoning and there was no moratorium on the address and that area was not dry. He identified Applicant's Exhibit 1, as a lease for these premises with a monthly rent of \$1,800. That lease required the tenant to keep the parking lot clean and to have security in the evening. Applicant's Exhibit 2 was identified as the certificate he received after taking alcohol courses. Applicant's Exhibit 3 is a Package Goods Affidavit. He has spent \$45,000 in construction costs for the property. He sent out notice to the local residents, the Police Commander and the Alderman, and on the premises. He received no feedback or objections to the license. He did receive an anonymous letter opposing the license, Applicant's Exhibit 4.

After receipt of the anonymous letter, he contacted Alderman Brookins who was upset they had not met before the application was filed. That was the only meeting with the Alderman and the Alderman never contacted him to discuss the application or the Plan of Operation. He called the Commander and called Sergeant West but he never heard back from either of them.

Applicant's Exhibit 5 is the original denial letter received by the Applicant which told him the applicant was being denied because of deleterious impact issues and also law enforcement concerns. It went on to say the objections were based on concerns about litter and increased violations of crime. The letter asked him to submit a Plan of Operation which he submitted to the Liquor Commissioner. Applicant's Exhibit 6 was identified as the Plan of Operation submitted to the Liquor Commissioner. After it was submitted, no one from the City or the community contacted him about the plan.

The next thing he received was the final denial letter signed by Liquor Commissioner Shannon Trotter, Applicant's Exhibit 7. It listed the same reasons for denial of the liquor license and added that the Plan of Operation was not accepted. It did not explain why the Plan of Operation was not sufficient.

On cross, the witness stated his lawyer explained why the Plan of Operation was rejected. He personally never contacted the Alderman about the final denial letter and he did not receive a call back from the Sergeant or the Commander. He did not attend any CAPS meetings or reach out to people who live nearby. His lawyer explained people would object because of law enforcement and explained the term deleterious impact. He currently maintains the parking lot near the business by having a guy clean up the trash every shift. He has security from 6:00 until 2:00 at the Maxwell stand and a guy in the parking lot to make the customers feel safe. He currently sees people loitering in that area.

On redirect, the witness explained the final denial letter did not include the names, addresses or phone numbers of community members who sent letters of objection to the issuance of the license. He did not know who in the community was objecting. Some of the conditions listed in the Plan of Operation came from the first denial letter.

Abd Ayesh started working for the City in November of 2003 as a Revenue Investigator and then became a Supervisor of Tax and License for the Department of Business Affairs. He left that position in June of 2010.

As a BACP Investigator, his duties included license permit checks and all types of licensing. He was involved in liquor license application investigations and would go out as part of a task force to ensure the applicant premises was 100 feet away from the school, church or library. He would make sure everything for the business was labeled the way it was supposed to be before they opened. He worked with the Chicago Police and Chicago Police Commanders all the time and conducted a couple of hundred liquor license application investigations. He did investigations in the 6th District two or three times and several times in the 21st Ward. The purpose during on-site visits for liquor establishments was to make sure the establishment was conducting the activity they were supposed to be doing. If it was a liquor store or package goods store, they were mainly package goods. If there was a grocery store with ten or fifteen percent of their activity to be liquor, that would be checked.

His experience with Plans of Operation was that if the Commissioner would send a denial letter with a timeframe-- to show up with a Plan of Operation. If the issues were addressed normally the license would be granted based on your plan. He has reviewed 70 to 80 plans of operation.

At this point, the witness was allowed to testify in the form of an offer of proof.

The witness stated city revenue investigators are considered law enforcement officers with full police powers including the power to arrest. Other than carrying a gun, the revenue investigator has the same authority as a police officer. He reviewed Applicant's Exhibit 6, and believes the Plan of Operation mitigates a deleterious impact. Everything was addressed except for security which is in the lease.

On cross, the witness stated he left the City because was fired and wrongfully accused of something he did not do.

At this point, Chairman Fleming noted for the record that he now recognized this witness as a person who was terminated based on a decision authored by Chairman Fleming. The parties agreed any information on why this witness left city employment would be considered stricken from the record.

FINDINGS OF FACT

After a thorough review of the entire record and having had the opportunity to observe the witnesses testify and weigh their credibility these Findings of Fact are made:

The City of Chicago proved by a preponderance of the evidence that the issuance of this Package Goods license at this address would tend to create a law enforcement problem.

The term “tend to create a law enforcement problem” is not defined in the Chicago Municipal Code or in the State of Illinois Liquor Control Act. The Appellate Court in *Vino Fino Liquors, Inc. v. License Appeal Commission of the City of Chicago*, 394 Ill.App.3d 516 914 N.E.2d 724(2009) defined the term with respect to the facts presented in that case. In that case, the Appellate Court reviewed the legislation and determined that it was the City’s intent to prohibit the issuance of a license to individuals and entities controlled by individuals who have a prior history of disobeying liquor laws and the law in general. The *Vino Fino* court stated:

Thus, to deny a license to an applicant who would “tend to create a law enforcement problem” is to deny a license to an applicant who would not obey liquor control laws or who would impede enforcement of the law.

In *Vino Fino*, the person who was 100% shareholder and manager of *Vino Fino* had a prior history of selling alcohol to minors. The Appellate Court ruled that history of disobeying liquor laws was sufficient evidence to deny *Vino Fino* a license on the grounds that it would “tend to create a law enforcement problem.”

If the ruling in *Vino Fino* was the only Appellate decision interpreting the phrase “tends to create a law enforcement problem,” the denial of this license on that basis would need to be reversed since there is no evidence that the Applicant, in this case, has any past history of violations of the law in general or liquor laws specifically. That is not the case.

The case of *Move N Pick Convenience, Inc. v. Rahm Emanuel*, et al, 30 N.E.3d 661 (2015) also defined the term “tends to create a law enforcement problem” under the facts of that particular case.

The background investigation into the application for a package goods liquor license by *Move N Pick Convenience* revealed no criminal incidents or history of disobeying liquor laws or other laws by the applicant. The denial was based on a finding that issuance of the liquor license “would tend to create a law enforcement problem.” The basis for the finding was the opinion of the 13th District Police Commander, Frank Gross, that “the issuance of a merchant selling

packaged goods in this area will increase the calls for service and criminal activity...including loitering, drinking on the public way, verbal and physical disputes from the misuses of alcohol and violence resulting from these disputes.”

At the hearing before the License Appeal Commission Commander, Gross testified to the same facts as set out in the denial letter. He also testified to the crime incidents and gang-related incidents within a few blocks of the applicant location. He opined if liquor was allowed he would have increased calls for service.

In addition to Commander Gross, a number of local residents testified in support of the denial of the liquor license application.

In the *Move N Pick* opinion, the Appellate Court reviewed the decision in *Vino Fino* and determined that *Vino Fino* was decided on the specific facts of that case and noted specifically that the *Vino Fino* opinion does not state that an applicant’s history was the only factor to consider in deciding if the issuance of a liquor license would “tend to create a law enforcement problem.” It went on to state “where the un rebutted evidence demonstrated the likelihood of increased demand for police services to the establishment in a crime infested area that already had limited law enforcement resources, a denial of a package goods license on the basis that awarding the license “would tend to create a law enforcement problem” was proper.

The testimony in this case from Commander Bradley describes the area where the Applicant premises is located as an area close to the Red Line with a lot of heavy foot and vehicular traffic.

The crime in that area is up compared to other areas in the district and he needs to dedicate resources there on a daily basis.

The Commander rendered his opinion that this Package Goods license at this location should not be granted because of the crime issue in this area. The Commander does not object to the issuance of all package goods licenses but objects to this one based on its location. This license would be a drain on his resources in the Commander's opinion and would cause a law enforcement problem. The Commander testified to crime statistics in the area of the Applicant location and admitted he did not know the specifics of each of those crimes or if any specific crime was related to alcohol. The Commander did explain that in his opinion alcohol is a contributing factor to crime in that area and that the culture that a package liquor store creates would put a drain on his resources either by attracting people who frequent the establishment and people who prey on him.

Several members of the community testified to the existing crime issues in the area and to their fear that a liquor store in this location would add to existing crime problems and create new crime problems.

The burden of proof on this issue is preponderance of evidence. The City of Chicago has proved by a preponderance of the evidence that the issuance of a package goods liquor license to 9444 S. Lafayette would tend to create a law enforcement problem.

The denial of this application for a Package Goods liquor license is Affirmed on that basis.

The City also alleged a separate basis for denial of this license that its issuance would cause a deleterious impact on the health, safety or welfare of the community.

Deleterious Impact is defined under the Chicago Municipal Code 4-60-010 as:

... 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.

Since this section of the code allows an applicant to present a Plan of Operation to abate any deleterious impact, a denial on this basis must initially determine if the City has established issuance of this license would create a deleterious impact. If that is established, the applicant then has the burden of proof of establishing by clear and convincing evidence that a proposed plan of operation will provide reasonable assurance that the issuance of the license will not have a deleterious impact.

In deciding the initial issue as to whether the City proved the issuance of this Package Goods license would cause a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located, this Commission adopts the evidence referenced previously in the decision from Commander Bradley, the community members, and Alderman Brookins.

That evidence established the area of the license premises is one that has heavy pedestrian and vehicle traffic. The area has loitering, people urinating in the alley, and panhandling. The

opinions from the witnesses is that the addition of another package liquor store in the area will exacerbate the existing problems. Similar evidence was presented by the City in the case of *M.J. Ontario v. Daley* and was found to be sufficient to establish that issuance of a late hour license would cause a deleterious impact on the health, safety and welfare of the community in which the licensed premises would be located.

That issue decided, this Commission must next address if the Plan of Operation submitted by the Applicant proved by clear and convincing evidence. That phrase has been defined as the degree of proof which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition in which a person has the burden of proof is true.

The Applicant testified he did, in fact, submit a Plan of Operation that included terms and conditions that were suggested in the denial letter. After it was submitted, he heard nothing from the City until the final denial letter was issued. It informed him his Plan of Operation was not accepted but contained reasons why it was not accepted. The Applicant gave no testimony as to why and how the Plan of Operation provided reasonable assurance that the issuance of this license will not have a deleterious impact.

The Applicant presented Abd Ayesh as an expert witness on plans of operation. His expertise was based on his prior work experience as a Revenue Investigator in which he reviewed 70 to 80 plans of operation. Based on his answers to preliminary questions, the Commission found his testimony was not relevant in that he was not qualified to testify as to what the Local Liquor Control Commissioner would rely on in deciding to accept or reject a proposed plan of operation.

The witness was allowed to testify by means of an offer of proof. In that testimony, the witness stated he reviewed the Applicant's Plan of Operation and his opinion is that it addressed all the necessary issues and the Plan of Operation would mitigate any deleterious impact. He added that basically everything was addressed except for security which is on the lease.

This Commission reaffirms its ruling that Mr. Ayesh was not qualified to render an expert opinion about whether the Plan of Operation mitigated any deleterious impact. In order to avoid possible remand in the case of an appeal, the Commission finds that if the testimony presented by this witness had been allowed in evidence, that testimony in combination with the testimony of the Applicant, did not prove by clear and convincing evidence that the issuance of this license pursuant to the Plan of Operation would not cause a deleterious impact.

This is particularly true if one considers the testimony from the Commander, the Alderman, and the community on this issue.

The denial of this Package Goods liquor license to this Applicant is Affirmed on the grounds that its issuance would cause a deleterious impact on the health, safety and welfare of the community.

DECISION OF CHAIRMAN FLEMING

While I agree with the analysis and findings of my fellow Commissioners, I feel that I must recuse myself from this case. I do so with the belief that I could be fair and impartial but with the concern that my participation, in this case, could lead to a reversal of this decision.

During the course of the hearing, counsel for the Applicant raised the issue of ex parte communication between Alderman Brookins and me. This matter was raised with respect to City Exhibit 11, which was a letter sent to me as Chairman of the License Appeal Commission on October 31, 2017. That exhibit reflected Alderman Brookins' opposition to the issuance of this license. That exhibit referenced a letter that was sent to Alderman Brookins on September 20, 2017. This exhibit was identified for the record as Commission Exhibit 1. That letter advised Alderman Brookins that an appeal in the matter was filed and was set for hearing on November 1, 2017. It further stated the "License Appeal Commission may potentially rule on this case and we are not able to deal with any aspect of this case until it actually goes to hearing." It did advise the Alderman to contact our office if there were any questions. On the record, I referenced the fact that I never had a communication with the Alderman or Alderman's Chief of Staff.

Alderman Brookins testified he had no conversation with me.

While I do not feel that the letter sent to Alderman Brookins meets the standard of an ex parte communication, in order to avoid this point becoming a basis for reversal, I will recuse myself from this case.

The second matter of concern deals with the witness Abd Ayesh. This Commissioner did not recognize Mr. Ayesh until he testified about his previous employment with the Department of Revenue at the City of Chicago. It was at that time I realized I had been the Hearing Officer in a discharge hearing before the Human Resources Board and wrote a report recommending the termination of Abd Ayesh. Since that case dealt with issues of the credibility of Mr. Ayesh and since the recommendation of discharge was based on those credibility determinations, it could be

argued that this Commissioner had a preconceived notion as to the credibility of Mr. Ayesh in this hearing. For that reason, I recuse myself from entering into a decision in this case.

Dennis M. Fleming
Chairman

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 AFFIRMED.

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: January 25, 2018

Donald O'Connell
Member

Cynthia Cronin Cahill
Member