

**CITY OF MINNEAPOLIS
CITY COUNCIL
PUBLIC SAFETY AND REGULATORY SERVICES COMMITTEE**

In the Matter of the On-Sale Liquor License, Class B, **AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION FOR
ADVERSE LICENSE ACTION**
Held by T.J. Management of Minneapolis
d/b/a Gabby's Saloon and Eatery

This matter came on for a license hearing on Wednesday January 23, 2007 and on Wednesday February 6, 2007 at the regularly-scheduled meeting of the Public Safety & Regulatory Services Committee of the Minneapolis City Council. The license hearing was called to consider the Findings of Fact, Conclusions of Law and Recommendation submitted by Chief Administrative Law Judge Raymond R. Krause on November 21, 2007 relevant to the operation of Gabby' Saloon and Eater (hereinafter "the Licensee"), located at 1900 Marshall St. N.E., Minneapolis, Minnesota. The Licensee, T.J. Management of Minneapolis, Jeffery Ormond and Tim Welch were present and represented by their attorney Scott Harris of the Law Firm of Leonard, Street and Deinard.

Based upon the record as forwarded to the Committee by the State of Minnesota Office of Administrative Hearings as well as the arguments presented to the Committee in hearing, the Committee hereby makes the following:

FINDINGS OF FACT

1. Pursuant to a request from the Minneapolis Department of Regulatory Services, Business Licensing Division in June of 2007 this matter was referred to the State of Minnesota Office of Administrative Hearings for purposes of convening an administrative hearing regarding the Class B On-Sale Liquor License of Gabby's Saloon and Eatery.

2. The administrative hearing process was initiated pursuant to a Notice of and Order for Hearing dated July 11, 2007. Chief Administrative Law Judge (hereinafter “ALJ”) Raymond Krause was assigned to preside over the matter, OAH Docket No. 2-6010-19003-6.

3. The Notice of and Order for Hearing alleged that good cause exists to take adverse license action against the business licenses held by the Licensee and recommended adverse license action up to and including revocation of the license as the appropriate sanction.

4. An administrative hearing was held in this matter in front of ALJ Raymond Krause on October 9, 10 & 11, 2007. The Licensee—Jeffrey Ormond and Tim Welch--were present at the administrative hearing and represented by their attorney Scott Harris. Lee C. Wolf, Assistant Minneapolis City Attorney, appeared for and on behalf of the City of Minneapolis.

5. At the administrative hearing the following individuals testified on behalf of the City of Minneapolis: Minneapolis Police Department Lieutenant Travis Glampe, Deputy Director Business Licenses Ricardo Cervantes, Manager Problem Properties Unit and former License Inspector Dan Nizolek, License Inspector Linda Roberts, Second Precinct Commander Robert Skomra, and community resident Stephen Herzog. The following individuals testified on behalf of the Licensee: Licensee Mr. Jeffrey Ormond, Minneapolis Police Officer Dan Garman, and Director of the Bottineau Neighborhood Association Christopher Gams.

6. The record was closed by ALJ Krause effective October 25, 2007 and he issued his Findings of Fact, Conclusions of Law and Recommendation on November 21, 2007.

7. ALJ Krause concluded that the City of Minneapolis **did establish** by a preponderance of the evidence that good cause exists for the City to impose conditions or

restrictions against Licensee's Class B On-Sale Liquor License pursuant to Minneapolis Ordinances § 259.250(9) based upon the following:

- The available parking is insufficient for its capacity crowds and patrons park on the residential streets near Gabby's. The patrons speak loudly and play loud music from their vehicles as they leave the area. To control the flow of traffic, police use squad cars, lights flashing, to block intersections, and use loudspeakers to keep people and traffic moving. It takes nearly an hour after closing to usher patrons out of the neighborhood and the noise generated during this time undoubtedly disrupts the nearby residents.
- The fighting, public urination, public sex acts, loitering in the neighborhood by Gabby's patrons interferes with the health safety and welfare of the neighboring residents.
- That the operation of Gabby's requires the City to expend an excessive amount of limited resources to police Gabby's and its patrons.

8. ALJ Krause concluded that the City of Minneapolis **does not have the authority to revoke the Class B On-Sale Liquor License of Licensee** due to the lack of violations of the provisions in Minn. Stat. § 340A.41, which expressly limits the violations for which a municipality may revoke a liquor license.

9. Pursuant to applicable law and procedure, and as described on page 11 of the ALJ report:

This Report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61, the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council.

10. The City of Minneapolis served a proper Notice of Committee Hearing upon the Licensee and his attorney of record dated January 9, 2008 which notified the Licensee and his

attorney of the January 23, 2008 License Hearing additionally the City of Minneapolis provided notice on January 30, 2008 of the continued License Hearing to occur on February 6, 2008. In addition the City of Minneapolis provided notification of the right to file written exceptions to the ALJ report by filing such with the City Clerk's Office.

11. The Licensee and his counsel received all notifications regarding the license hearing and the Licensee's right to file written exceptions to the Findings and Conclusions of the ALJ report. The Licensee, through its counsel, properly filed written exceptions with the City Clerk on January 17, 2008. This Committee, in hearing, heard argument from the Licensee's counsel regarding such exceptions and hereby finds that the meticulous, detailed and well-reasoned report of the ALJ is accurate, prudent and balanced.

12. The quantity, severity, scope and repeated nature of the actions of Licensee's patrons has had a deleterious impact upon its community while consuming a disproportionate and unreasonable amount of City enforcement and regulatory resources. This Committee finds that this established and lengthy negative impact upon the community and upon City resources, which continued for a lengthy period of time, were pervasive and severe such that placing conditions on the license is an appropriate sanction.

CONCLUSIONS

1. The Committee hereby **ADOPTS** and **INCORPORATES** the Findings of Fact, Conclusions of Law and Recommendation as issued by Administrative Law Judge Raymond Krause and thereby determines that good cause exists to take adverse license action against the Class B On-Sale Liquor License held by the Licensee based on the negative impact caused by Licensee to the surrounding residential neighborhood and the drain on City resources

caused by Licensee and its patrons. Good cause exists under Minneapolis City Charter Chapter 4, Section 16, Minneapolis Code of Ordinances § 259.250(9).

RECOMMENDATION

That the Minneapolis City Council impose the following adverse license sanction upon the Licensee pursuant to its authority derived from the Minneapolis City Charter Chapter 4, Section 16 (providing for adverse license action upon good cause) and M.C.O. § 259.250(9), and that these Findings, Conclusions and Recommendation be adopted by the City Council and made part of the official record:

1. That the following conditions of license be imposed to the Class B On-Sale Liquor License for T.J. Management of Minneapolis d/b/a Gabby's Saloon and Eatery:

- a) The licensee shall contribute \$10,000 sanction payable to Minneapolis Licenses and Consumer Services and \$15,000 earmarked for buy back time for the 2nd Precinct within 10 days of these conditions being approved by the full City Council and the Mayor.
- b) The licensee shall submit an acceptable comprehensive management plan to the City of Minneapolis no later than 10 days of these conditions being approved by the full City Council and the Mayor. The plan will encompass security, alcohol service, over-service as well as other strategies to effectively address criminal activity and neighborhood livability issues associated with the establishment. The licensee can determine the number of professional security and type of professional security they require to have a successful management plan.

- c) A properly trained manager or owner must be on-site at all times during business hours.
- d) The licensee will reduce the maximum number of occupants to no more than 438 customers at any given time, including staff and patio occupants. This number is based upon the 175 durable parking spots available (115 on site and 60 in the leased parking area) and 2.5 customers per parking spot.
- e) The licensee will eliminate any free drink specials and replace them with reduced drink specials where the drink price would be no less than fifty (50) percent of the regular drink prices.

2. That the request of the Licensee for a stay of the license revocation sanction pending a potential appeal be **DENIED in part and GRANTED in part**. At the January 23, 2008 license hearing in this matter, the Licensee made a request for a stay of the conditions sanction pending a potential appeal via application for a writ of certiorari to the Minnesota Court of Appeals. Licensee's request for a stay of conditions as to conditions a, b, c and e is **denied** and Licensee's request for a stay of conditions as to condition d limiting the maximum number of occupants to no more than 438 customers is **granted** during the pendency of any appeal of this matter. The request for a stay of the imposition of conditions was granted in part and denied in part by the City Council after balancing the potential harms to the City and the neighboring community with the Licensee's desire to preserve the status quo pending appeal as follows:

- The record amply establishes the existence of numerous, pervasive and substantial negative impacts the operation of Licensee's business has had on the surrounding community and the excessive amount of inspection and police resources which were

expended on policing Licensee and its patrons in an attempt to curtail the nuisance and criminal activity associated the patrons.

- The established negative impacts on the surrounding community include within their ambit loud music during the early morning hours, fighting, public urination, loitering and drunken patrons knocking on the doors of houses in the neighborhood demanding entrance. Because of this history and continuing interference with the health, safety and welfare of the neighboring residents the Committee can not be assured that should a stay of the licensing conditions pending appeal be granted that the welfare of the neighborhood would not continue to be negatively affected.
- A stay of the licensing conditions for a period of multiple months during the pendency and consideration of an appellate action would require the continued extension of scarce and valuable regulatory and police resources in the Second Precinct to police Licensee and its patrons at the expense of other areas within the Precinct.
- The Committee finds with regards to conditions a, b, c and e that the above-enumerated factors outweigh the potential harm to the Licensee should a stay not be granted.

Said partial denial and partial granting of stay is hereby affirmed based on the sound reasons of public policy, resource allocation and potential ongoing or reoccurring deleterious community impact expressed during Committee deliberation of the request and expressed herein.
