

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Martini Bowling & Billiard, Inc. )  
d/b/a Martini Club at Manor Bowling and Billiard )  
Applicant (Late Hour) )  
for the premises located at )  
3124 North Central Avenue ) Case No. 12 LA 72  
 )  
v. )  
 )  
Department of Business Affairs and Consumer Protection )  
Local Liquor Control Commission )  
Gregory Steadman, Commissioner )

ORDER

DECISION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER O'CONNELL

Martini Club at Manor Bowling and Billiard's application for a Late Hour Liquor License in a moratorium zone was denied for two reasons. The first reason was that the applicant failed to provide the number of required valid signatures on a petition as set out in Section 4-60-021 of the Municipal Code of the City of Chicago. The second reason for the denial was the determination of the Local Liquor Control Commissioner that the issuance of the late hour liquor license would have a deleterious impact on the health, safety, and welfare of the surrounding community. The applicant did not submit a Plan of Operation to the Local Liquor Control Commissioner within 20 days from the date of the denial. The applicant filed a timely Notice of Appeal with this Commission.

Since this case has two separate bases for the denial of the late hour license, the evidence will be summarized so as to address each basis of denial individually. The evidence dealing with

the issue of the denial based on deleterious impact will be summarized first and then the evidence on the denial based on the failure to obtain sufficient signatures on a petition so as to lift the moratorium.

Ray Suarez has been the Alderman of the 31<sup>st</sup> Ward since 1991. His duties include attempting to make the community a better place to live. The address of 3124 North Central is within the boundaries of the new 31<sup>st</sup> Ward. He is familiar with the applicant premises and is aware that it has applied for a late hour license. His opinion is that the license should not be granted. The applicant has not earned the privilege to operate with a late hour license. There are a lot of problems it has created in the community and he and the residents do not want it. The witness identified City's Exhibit 6, in evidence, as a letter he wrote to the Commissioner objecting to this license. His concern and the concern of the neighbors is that the licensee becomes a major nuisance in the evening. The people leaving do not respect the everyday way of life. People are yelling and sometimes throw things and use the alleys as urinals. He has also talked to the police about the amounts of calls for service. Many of his constituents have expressed their objection to the issuance of this license.

The Alderman noted there are other liquor establishments in the area which are monitored to ensure they do their business correctly and keep the area clean. He is not opposed to the issuance of all liquor licenses, but businesses have to respect the community. People leaving the establishment hang around, argue, and cause loud noise. It sometimes becomes a physical problem and the Chicago Police Department has complaints to show this place has not

earned that consideration. It also becomes a parking problem when the overflow goes into the streets of the residents.

All the problems he has discussed and has already seen will be exacerbated by the issuance of this license.

On cross, Alderman Suarez stated he is aware of the procedure in place that allows a license holder to apply for a late hour license by completing a petition requirement. He disagreed with the proposition that if an applicant obtains a sufficient number of signatures it suggests the neighbors support the license. The Alderman explained that the people who get the petitions do not tell it like it is supposed to be; they paint a rosy picture and people become confused and sign the petition. He wrote his objection letter in October when they were practicing under the new ward boundaries. The previous Alderman also opposed the license. Alderman Suarez stated he was not aware the Department of Business Affairs called a series of meetings between the community and the licensee. He was not aware of the City's attempt to resolve what were considered issues with this licensed premises.

The City called a number of secondary witnesses who testified they were in opposition to the issuance of this license. They were Greg Pozmanski, Emily Hoerner, Karin Rodriguez, Christopher Vasquez, Boysie Caison, Hector Segovia, Wanda Staron, and Robin DeCoudres.

Linda McColl has lived at 3140 N. Parkside for the last seventeen years. She currently lives there with her husband, two daughters, and four grandchildren. She is opposed to the issuance of the late hour license application because of her previous experience with things that have happened. She lives directly behind the Martini Club and gets a lot of noise from people parking on her street and the parking garage. There were two instances where she had to call the police because of what was going on in the public garage. One instance was on June 7, 2012, when the Bad Girls Club held a party. She called the police at 2:00 am because it sounded like a riot in the parking garage. There was screaming, shouting, horns blaring and engines revving. She also attended three hearings where this matter was brought up and the owner stated these people do not have respect for anyone. On Thursday through Sunday the whole parking garage is filled. The Martini Club did take care of a number of issues and it was pretty good for a while, but old habits come back. The problems that were abated earlier that have come back are the volume and noise out of the parking garage. She has been woken up on other occasions due to people getting loud and car alarms going off.

On cross, Ms. McColl said there is an alley, a house, and then her street and she is approximately 300 feet from The Martini Club. No one has been by her house to tell her they were doing sound checks. At the first meeting, the mediator brought up recommendations; at the second meeting there was a review of what had been done, and the final meeting reviewed the training that the servers had. There was a successful termination of those meetings in May of 2012. She does not remember the date she received notice of the late hour application.

On redirect, Ms. McColl stated since that last meeting in May of 2012 she was disappointed in what Martini did complete and did not stay at that level. It did not concentrate on keeping everything the way it was. The issue of a late hour license did not come up at these meetings. She would characterize Martini Club as a club and not a restaurant.

Amara Bleau has lived at 3100 N. Parkside which is a block south of the Martini Club for twenty-two years. She is opposed to the issuance of this license. She is concerned about why the Martini Club wants to extend its hours of operation when it did not follow what was originally presented as a family oriented restaurant. She is concerned that a late hour license would bring on more of what has been going on. By that she means a lot of disruption, a lot of noise, a lot calling the police, and a lot of people drinking too much. The people are pretty intoxicated and this has happened since the Martini Club has opened. There are restaurants on Central and the Greek one has a liquor license. She does not know if the Polish bar has a liquor license. There is also a small bar and a banquet hall. She does not believe the disruptive people are coming from these places. She identified City's Exhibit 7, in evidence, as pictures showing the residential nature of the neighborhood.

On cross, the witness stated she did not take pictures of the commercial aspect of Central Avenue. She does not know the hours of operation for the four licensed premises on Central or for Chicago By Night. She does not know if the banquet facility has a liquor license. She did become aware of the community meetings. She does not know if the cars going down Parkside and the people walking by that are loud are coming from Martini's.

David Potete has lived at 5245 West Nelson which is about 3 ½ blocks from the Martini Club since April of 2012. He opposes the issuance of this late hour license. He is the Pastor of Northwest Community Church at 5318 W. Diversey Avenue. His congregation, which includes several people living within four blocks of the Martini Club, opposes the issuance of the license. He is the Vice President of Belmont Central Chamber of Commerce but is not testifying in that official capacity. He personally has witnessed loitering. This is essentially a second bite of the apple. All that was worked out.

On cross, the witness stated the loitering he observed was in front of the parking facility and in front of the Martini Club. There were 15 to 20 people loitering.

Marie Pozmanski has lived in the 2800 block of North Mango, about five blocks away, for well over twenty years. She cares about the issuance of this license because she runs the CAPS meetings for the area. In those meetings, the community voices its concerns about any issues in the neighborhood as far as crime or nuisance issues. Her opinion is that Martini should not be issued this license because of the complaints about loitering in front of the club and renewed complaints about music and specific instances where people have called the police. After the community meetings, the noise was less and things calmed down at closing time but as time has gone on, the complaints are rising again.

Kevin Navarro has been with the Chicago Police Department for 28 years and has been the Commander of the 25<sup>th</sup> District for fourteen months. He is familiar with the Martini Club which is a bar/restaurant establishment at 3124 N. Central. That is a commercial block within a

residential area. He is aware the Martini Club has filed an application for a late hour license. In September 4, 2011, the then Commander Vallas objected to the issuance of this license. The witness is also opposed to the issuance of this license. In his experience, any 4:00 am license he has dealt with has been a drain on police resources. He currently has a couple of 4:00 am establishments in his district that require cars out in the front at closing time due to disturbances, fights, drunkenness, and noise. This would be one more establishment he would need to put a car on. This establishment is within less than a block of a 4:00 am license in the 16<sup>th</sup> District that requires a 25<sup>th</sup> District car due to the disturbances. These cars are placed out on the weekends mostly starting at about 3:30 am until a half hour after closing. There is a risk with any 4:00 am bar as you have people coming to 4:00 am bars that already have had too much to drink and they create noise, disturbances, and fights which cause noise to the residents. Nothing good comes out of an establishment at 4:00 in the morning.

On cross, Commander Navarro stated it would be his inclination to deny approval of any 4:00 am license application in the 25<sup>th</sup> District. He has had personal involvement with the management of the Martini Club when he responded to a fight on the premises on New Year's Eve.

Sophia Carey is a Business Consultant/Supervisor for the Department of Business Affairs and Consumer Protection. Based on letters of objection from the community, the Alderman, and the police commander, the license was also denied on the basis of deleterious impact. When a license is denied for deleterious impact an applicant is given a chance to submit a Plan of Operation to resolve that concern. In this case, the applicant did not submit a Plan of Operation.

Thomas Erickson is a retired lawyer who works as a Legal Assistant for Timothy Fitzgerald. He filed this application in 2011. In the early fall of 2011, he was notified this application process was to be suspended pending community meetings. The witness attended those meetings which addressed the issues of litter, loitering, pedestrian safety, noise, and parking. There were three meetings in total. Erickson identified Licensee's Group Exhibit 3, as a map detailing sound levels at various addresses near the applicant premises.

On cross, the witness stated these community meetings were noted by a staff member of the Department of Business Affairs. Erickson does not refer to them as nuisance meetings but meetings to try to develop compliance between the establishment and the neighborhood. These meetings dealt with litter, noise, parking problems, and those sorts of things. He did not prepare the documents reflecting noise levels.

Monica Geyn has been employed at the Martini Club since 2009. She attended all the community meetings with the Department of Business Affairs and Consumer Protection. As a result of those meetings, the establishment measured sound by audio meter. They also surveyed neighbors to see if there was noise. She identified Licensee's Exhibit 12, as a table reflecting the level of noise at different addresses. She explained their employees clean 200 feet around the Martini Club and also clean streets not belonging to the Martini Club. Martini cleans areas by four other commercial properties that share the alley with Martini. There were at least ten meetings with the community. It is the opinion of the witness that the meetings ended satisfactory.



The relevant evidence with respect to whether the applicant submitted sufficient signatures on a petition to lift the moratorium will now reviewed.

Sophia Carey has been employed for eight years as a Business Consultant/Supervisor with the Department of Business Affairs and Consumer Protection. She is familiar with the fact that the applicant filed for a late hour liquor license for the premises located at 3124 N. Central. When a late hour license application is filed, the City provides the applicant a list of registered voters from a computer system hooked up to the Board of Election's information records. The applicant must notify everyone on the list and are required to obtain a minimum of a majority of individuals signing a petition plus one individual. The radius for the voters is 500 feet and the registered voters list is provided by the City. Ms. Carey identified City's Exhibit 8, in evidence, as the registered voter list provided to the applicant by the City. It lists the registered voters within 500 feet of 3124 N. Central and was generated on March 16, 2011. She also identified City's Exhibit 9, in evidence, as the petition filed by the applicant. For every petition, the consultant reviews each line to determine if the signature is acceptable. The signatures marked with purple are the accepted signatures. City's Exhibit 10, in evidence, is an internal document used by the city consultants reviewing petitions to determine if there are a sufficient number of signatures.

In this case, the consultant determined the list provided to the applicant had 246 names. There were three duplicate names which were subtracted from that total which left a total of 243 individuals. From that number, the consultant took 50 percent plus one to come up with 123 required signatures. There were 143 signatures on the petition, but 40 were not accepted for

different reasons. That ended up with 102 confirmed signatures which was less than the 123 that were required.

City's Exhibit 10, also lists the dates relevant to the application to ensure the voter information is up to date as possible.

City's Exhibit 11, in evidence, is an affidavit provided by Mr. Fitzgerald referencing a number of voters who are allegedly duplicates, deceased, or moved. It is the regular practice of the City to accept such affidavits but these documents were incomplete. The City needs to know the names of the individuals claimed to have moved or become deceased. That is their way of verifying and doing due diligence to confirm the individuals have moved or died. There are no names. The affidavit also refers to some voters not being found by the post office. That does not necessarily equate to having moved or died. The numbers provided in Mr. Fitzgerald's affidavit were not subtracted, the department needs actual names so it can verify whether individuals listed as moved or deceased are moved or deceased.

On cross-examination, Ms. Carey stated it is the usual practice for the department to receive the green card receipts for the certified mailing from the applicants. She did not have those green cards with her. The applicant does submit any return mail they receive. She was familiar with the affidavit of Mr. Fitzgerald and repeated the City was not supplied with names in the affidavit. Names were supplied on green cards returned because the parties were unknown but return mail does not necessarily imply someone has moved. It just means it was not delivered. Ms. Carey did not believe that anyone in her office took the petition to the Board of

Election Commissioners to go through voters records to determine if a signature is proper. She was not the only individual who determined the submitted affidavit was insufficient to strike names. The application was reviewed by multiple individuals who took that position. Ms. Carey also explained that the list of voters within the 500 foot radius is generated electronically.

Ms. Carey was shown a module map marked as Licensee's Exhibit 1, and she said it was incomplete because it did not show the full circle and does not show the range. She stated applicants are not necessarily given a map but the applicant is given a list of voters within the 500 foot radius.

Diana Sanak is a manager assistant to Mr. Killerman who owns the applicant business located at 3124 N. Central. She helped prepare the application for a late hour license by collecting signatures and verifying people were alive. The witness identified 13 pages as a group exhibit, but it was never actually marked with a specific exhibit number. She described the group exhibit as her notes made when she walked around to collect signatures. She noted on that document that voters had moved. This was verified by people saying residents no longer lived there.

She also collected the returned mail that had been sent to all the registered voters. She used that return mail to verify her own field findings as to whether people were deceased, unknown or moved. At some point she helped prepare an affidavit that stated 38 voters had moved, at least five had died, and there were some duplicates. She also determined that approximately 35 signatures were not within the 500 foot radius. The information and numbers

contained in that affidavit are correct based on her field experience. The total number of registered voters totaled 182 after these subtractions and 120 valid signatures were submitted.

As part of the application she submitted, the documentation is outlined in the affidavit including the green cards. Some of the returned mail had notations. She did not keep copies of the green cards. She determined that 38 people were not within the 500 foot radius by looking at a map that had addresses and compared it to Google Earth. If a building was partially within the 500 foot circle, she did not count them. She determined five to nine people were dead by talking to neighbors and from verification from Tom Erickson. She does not remember the exact information written in the 70 to 80 returned pieces of mail. Helen Ciesla is one of the persons found to be dead.

Charles Holiday has worked for the Chicago Board of Election Voter Registration department for five years and has been with the board for 34 years. He is familiar with the term “legal voter” which means a voter whose residence is on file and whose status is that of an active voter. An inactive voter is one who may have been challenged by a mail canvass of the Board of Election. Ninety days prior to any election, the Board of Election does a mail canvass by mailing out a new voter registration card to all registered voters. If that card comes back, the voter is placed in a challenge status. A second notice is sent which is forwardable to a second address. Inactive voters must take steps on Election Day to activate their registration. An inactive voter is a challengeable signature on a petition until the voter is restored and becomes active.

The witness identified Applicant Group Exhibit 4 as a response to a Freedom of Information Request for the status of a voter. It is the voter search screen for individual voters that were in the list of eligible voters tendered to the applicant. The first name was Leon Pantoya at 3141 N. Parkside and his status was cancelled as of May 13, 2013. He was considered inactive in 2008 because of a mail canvass and was cancelled for inactivity in two federal elections.

The next individual is Sam Grisanti of 3121 North Parkside. He was cancelled for inactivity in two federal elections and according to Licensee's Exhibit 5, a death certificate, he passed away on January 29, 2009. The third individual was Norma Cruz of 3112 North Parkside who was cancelled on May 13, 2013, for being inactive in two federal elections. The record does not reflect a date when the voter became inactive.

Kimberly Porter at 3106 North Parkside was cancelled as a voter on May 13, 2013, for being considered inactive for at least eight years. She failed to respond to a notice from the Board in 2005.

Tanya Cherry of 3055 North Parkside was cancelled on May 13, 2013, due to failure to respond to mail canvass for two federal elections going back eight years.

Louis Kotulski at 3111 North Major was cancelled on May 13, 2013, for failure to respond to notices from the Board over an eight year period.

Sylvia Plewa at 3123 North Major was cancelled on May 13, 2013, for failure to respond to two notices from the Board for federal elections over an eight year period.

The witness stated voters would have been on inactive status prior to being cancelled.

Helen Ciesla was listed as a current legal voter with an address of 3112 North Central.

Christian Alicea at 3055 North Parkside was cancelled because she failed to respond to previous notices from the Board for federal elections and was placed in the inactive file. The date of cancellation was May 13, 2013.

The witness was shown the list of eligible voters within 500 feet of the proposed licensee which is in evidence as City's Exhibit 8. It was not prepared by the Board of Election Commissioners and is not certified by the Board of Election Commissioners. On an actual poll sheet, new voters would be identified and inactive voters would not be listed. Mr. Holiday agreed it was possible some of the inactive voters were also deceased.

On cross, the witness clarified a voter is cancelled if they do not vote in two federal elections and do not respond to a notice sent to them. Of the nine voters in questions all but Helen Ciesla were removed for this reason. Ms. Ciesla is an active voter. While he does not know if the other eight are dead or alive, he checked to see if there were death certificates for those voters and he found none.

On redirect, Mr. Holiday agreed that Mr. Grisanti's card had notation that he was cancelled for the same reason as the others, but that was not the reason he was cancelled from the standpoint of the Board of Elections.

Thomas Erickson also testified with respect to the issue of the petitions in this case. He was involved in the filing of an application for a late hour license at 3124 N. Central, also known as Manor Bowling and Billiard. He was involved in the preparation of an affidavit signed by Mr. Fitzgerald. This was identified as Licensee's Exhibit 6, and was also City's Exhibit 11. The term "alleged registered voters" in Paragraph 3 is because he does not know if they are registered voters until the names are checked against county records. The document referenced is City's Exhibit 8, which is the list of registered voters with a 500 foot radius. City's Exhibit 8 is not certified. Paragraph 4 of that affidavit states that numbers should be reduced by 38 since that number did not live wholly within the 500 foot measurement of the module. Mr. Erickson stated at the time the affidavit was signed by Mr. Fitzgerald, there was a list with the names and addresses of those 38 voters. Mr. Erickson then identified Licensee's Exhibit 8, as a list of addresses that did not fully fall within the 500 foot radius. Based on those addresses not being within the 500 foot radius, Mr. Erickson read off the names of 22 voters whose address is not within the 500 foot radius. Those 22 voters were:

- Raul Escanio – 3053 North Major
- Nayda Rivera – 3053 North Major
- Maureen Hajduk – 3057 North Major
- Dean Christopher Hajduk – 3057 North Major
- Susan Panfil – 3059 North Major
- John Panfil – 3059 North Major
- Arturo Amezcuz – 3040 North Parkside
- Kalena Calvin – 3040 North Parkside

- Elio Zavaleta – 3040 North Parkside
- Sergio Hernandez – 3035 North Parkside
- Lilia Martinez – 3035 North Parkside
- Eucenia Johnson – 3037 North Parkside
- Milagros Lopez – 3037 North Parkside
- Mallory Diaz – 3042 North Luna
- Santa Melendez – 3042 North Luna
- Sixto Rosado Melendez – 3042 North Luna
- Zoraida Melendez – 3042 North Luna
- Melody Marie Rivera – 3042 North Luna
- Carlos Maldonado – 3042 North Luna
- Marlen Maldonado – 3042 North Luna
- Francisco Fabian – 3048 North Luna
- Cindy Tello – 3048 North Luna

Mr. Erickson referenced to the name of Robert Garza on line 11 in City’s Exhibit 8. That line has a blue line which to Mr. Erickson suggests that signature was not allowed since the name of that person was not on the list of voters in City’s Exhibit 8. The witness stated Robert Garza at 3129 North Parkside is listed as an eligible petition signer on Page 9 of City’s Exhibit 8.

Erickson also referenced the name of a Luis Esparza of 3112 North Luna which was marked in yellow in City’s Exhibit 9. He then noted on City’s Exhibit 8, Line 19, Page 3, an eligible signer named Esperanza Irais.

He also discussed signers named Helen Ciotuszynki and Lucyna Binkul from Page 5, Lines 1 and 9 of City’s Exhibit 9. Erickson asserted they were removed as eligible signers for not being eligible signers when they were listed in City’s Exhibit 8. A Jan Binkul who signed on Line 23, Page 6 of the petition was removed according to Erickson for not being in the eligible



voter list when she was eligible. Mr. Erickson also objected to the removal of a Miguel Guaman who signed on Page 6, Line 22 of the petition because he believed Miguel Guaman was removed incorrectly as an ineligible voter.

Erickson then addressed the signatures of Jeanine Barren on Line 9, Page 11 of the petition, Ostevado Humberto on Line 11, Page 12 of the petition, and Danuta Kozak on Line 1, Page 15 of the petition. His position was that these three signatures were removed improperly on the basis they were not eligible voters when they were on the list in evidence as City's Exhibit 8.

The witness stated that Greg Amnicki and Yolanda Flores were stricken as illegible signatories due to their signatures being illegible. The Board of Election Commissioners produced copies of these signatures certified as genuine by Executive Director Lance Gough.

Mr. Erickson identified Applicant/Licensee Exhibit 10 as a group exhibit consisting of the module from the City of Chicago with a circle showing the 500 foot radius and a printed list of voters allegedly living within that 500 foot radius. The witness made markings on this exhibit as to whether the voters were active or inactive, duplicates, and whether they were present in the voter registration records after December 16, 2008. He found 62 voters to be inactive.

Mr. Erickson then referenced to Mr. Fitzgerald's affidavit – Paragraphs 7 and 8, which alleges that US Postal Authority found 48 alleged residents moved or unknown and an additional 38 voters not found at the address listed. He filed the green card and return of certified mail with the application. He has requested to see those documents but was told they have been misplaced.

On cross, Mr. Erickson stated he could reconcile the affidavit listing 38 people and the list he testified to of 22 names. The list that should have been attached to Mr. Fitzgerald's affidavit should have come to 38. Erickson determined the 38 people did not reside within 500 feet of the location by looking at the map. Mr. Erickson could not remember how the licensee/applicant came into possession of this map dated December 2008, which was part of Licensee's Group Exhibit 10.

Mr. Erickson agreed that Nayda Rivera and Raul Escanio live in buildings partially within his version of the 500 foot radius. He agreed all of the buildings in which these 22 people live are actually in part within the 500 foot radius.

Mr. Erickson also acknowledged that the word duplicate is written on City's Exhibit 9 next to the names of Robert Garza, Helen Kutowski, Miguel Guzman, a female named Binkul, and a voter named Ostevedo. With respect to Licensee's Exhibit 10, the witness explained he learned of a voter name being inactive from a computer screen. He determined on a later date that those voters were gone by not finding their names or addresses in the Board of Election computers. He did not do street work in this case. He determined the 48 voters not residing at the listed address and the 38 voters not found as set out in Mr. Fitzgerald's affidavit by the returned green cards and envelopes. He did not make a list detailing who the 48 voters were or who the 38 voters were.

Bryan Knipper was recalled as a witness without objection. He testified that the green cards and returned letters that had been submitted with the application and had been misplaced had been found. He identified City's Exhibit 12, in evidence, as copies of the green cards with three on a page. There were 153 cards returned. The witness also identified City's Exhibit 13, in evidence, as the front and back of the returned envelopes sent by the applicant by certified mail. There were 86 letters returned.

On cross, Mr. Knipper testified he did not find a list of voters when he found the cards and envelopes.

The first issue to be decided de novo is whether the issuance of this late hour license would have a deleterious impact on the health, safety and welfare of the surrounding community. Per 4-60-040 of the City of Chicago Municipal Code, deleterious impact is defined as having an adverse impact on the value of any property, an increased risk of violations of the law, or a risk of a substantial increase in noise, litter, or vehicular congestion.

The issue of whether a licensee's operation of its business will cause a deleterious impact on a community always contains some sort of speculation. No one involved in these proceedings can know what will occur in the future. This type of case is somewhat less speculative since the applicant has been operating with a 2:00 am liquor license for several years. One can look at the evidence presented as to whether the present operation of the premises causes any deleterious impact on the community. If the answer to that question is no, then it is more likely that the operation of the late hour license would not cause a deleterious impact. If the answer is yes, then

that is evidence relevant and material to the issue of whether the operation of the 4:00 am license would cause a deleterious impact. This theory was followed in the M.J. Ontario case.

With respect to an increased risk of violations of the law, there has been no evidence in the record that the applicant has a history of violating liquor laws or the law in general.

Deleterious impact can be shown by an increased risk of violations of the law by the patrons of the applicant establishment. The actions of the patrons causing a deleterious impact can also be actions that impact the quality of life of the community that do not rise to a violation of the law. In this case there was evidence of a fight, but no evidence in the form of calls for service documenting criminal activity attributable to the patrons of the applicant.

The evidence in this case from the neighbors is that there is noise and loitering from the patrons of the 2:00 am license. The complaints of such activities were such as to have the Department of Business Affairs start community meetings to abate a nuisance under Section 4-60-190. While the evidence on what was actually discussed and agreed upon at those meetings was general and not very specific, it is evidence that the licensee agreed to take steps to abate the complaints. One of the arguments presented by the applicant is that the problems complained of as causing the deleterious impact had been resolved pursuant to the agreement reached as a result of the community meetings. The problem with that argument is that the neighbors who testified about those meetings all agree there was a period of time in which the problems were abated but at the time of this hearing, the problems were again present.

Based on the direct testimony from the neighbors as to what they observed combined with the testimony of the Alderman about the complaints he has received and the Commander's testimony as to problems inherent to 4:00 am licenses, the City did establish that the issuance of the late hour license would cause a deleterious impact on the health, safety, and welfare of the community. The denial of the license on deleterious impact is upheld.

It should be noted for the record that the applicant's attorney was to provide this Commission with copies of all of its exhibits placed in evidence. A number of the applicant/licensee exhibits allowed in evidence have not been provided to the Commission.

With respect to the copies of the green cards in evidence in City's Exhibit 2, all were signed for by someone.

With respect to the documents in City's Exhibit 13, many of the envelopes contain the letters "NL". No evidence is in the record as to what the designation signifies or who made that designation; other envelopes contain the initials "ANK" which also was not defined in the record. Four envelopes all mailed "Refused" but there is nothing in the record defining who refused the mail. Five envelopes were marked "vacant" which was also not defined in the record. These five are Witolo Peslola at 5522 W. Belmont, Rigoberto Martinez at 3111 N. Luna, Juan Silva, George Bermudez, and Leannard Disidero at 3105 North Luna.

Since this case deals with the denial of a late hour license application, the role of this Commission is to determine de novo the propriety of the decision to deny the license for failure to obtain the required number of signatures on the petitions. This issue is generally limited to a review of the evidence supporting the City's decision to not allow a certain specific signature. This case is more complicated because the facts in support of the denial initially deal with whether the applicant properly complied with the procedure utilized by the City in these types of cases. Within that argument are certain arguments referenced by the applicant with respect to constitutional issues such as due process. This Commissioner acknowledges such arguments, but this Commission does not have the statutory authority to rule on constitutional issues.

Section 4-60-130(e) of the Municipal Code establishes the procedure to obtain a late hour license. In relevant part, it requires that a late hour license applicant shall obtain and file with the Department of Business Affairs within 60 days before the filing of the application, the written consent of a majority of the legal votes registered within the affected area. Such measurement shall be made from the boundaries of the premises as described in the application for which the late hour license is sought to a radius of 500 feet away.

Sophia Carey testified to the process employed by the Department of Business Affairs and Consumer Protection to implement the requirements of Section 4-60-130(e). The procedure does allow attorneys for applicants to assert the total number of voters that should be reduced for because certain voters have moved or died or would not be eligible for some other reason. Ms. Carey asserted that the voters to be withdrawn from the eligibility list need to be specifically set

out by the applicant or applicant's attorney. The affidavit in evidence from Timothy Fitzgerald does not give the names and addresses of:

- a. The 38 voters who do not reside completely within the 500 foot radius
- b. The 3 voters listed twice
- c. The 24 voters not living at the address shown opposite their name in the module
- d. The 48 voters who do not live at the address listed opposite their names in the module according to the US Postal Authority.
- e. The 38 additional voters who were not found at the address opposite their name in the module pursuant to a finding by the US Postal Authority.

Without those names and addresses, Ms. Carey stated the Department could not do their due diligence to confirm these allegations. As such, the number of 246 voters was not reduced at all based on Mr. Fitzgerald's affidavit.

The Department of Business Affairs did reduce the total number of voters by 3, which were duplicates, leaving the total to 243 which led to a determination that the applicant needed 123 valid signatures. The petitions listed 142 signatures but 40 were removed leaving 102 opposed signatures. The City later agreed that two additional signatures were valid which gave us a total of 104 valid signatures. The applicant was nineteen signatures short.

The initial issue to be addressed is to determine the propriety of the Department's decision to reduce the number of voters by the total listed on Mr. Fitzgerald's affidavit. That affidavit seeks to reduce the 246 voters by 148 voters in addition to the 3 voters that were removed by the City as duplicates. There is no way the Department of Business Affairs could verify the blanket allegations in the affidavit. The fact that copies of the green cards and envelopes were filed with the application and were later found does not change that fact. The

decision by the Department of Business Affairs to not reduce the required number of signatures needed based on Mr. Fitzgerald's affidavit was appropriate and is affirmed. As a result of this decision, this Commission will not review de novo issues relating to the validity of the allegations in Mr. Fitzgerald's affidavit.

The second issue on the petitions to be addressed is whether the actual calculation of approved voters on the petition is correct. It was the decision of the Department of Business Affairs to strike 40 signatures from the submitted petition. It is for this Commission to determine the propriety of that decision. Since the City has agreed to 104 good signatures, eighteen of the signatures must be reinstated for the applicant to prevail.

The first list of stricken signatures were three marked in yellow on City's Exhibit 9, and removed as being illegible. Comparing the signatures and the list of voters shows:

- a. The signature of Irais Esparza at 3112 N. Luna should be allowed
- b. The signature for 3145 on Page 4, Line 22 of City's Exhibit 6 is illegible
- c. The signature on Page 7, Line 9 of City's Exhibit 9 is illegible

The signature of Jackie Dixon on Page 6, Line 26 of City's Exhibit 9, is crossed out and was properly not counted.

Seven signatures were stricken as being incomplete. The four names stricken from Page 5 of City's Exhibit 9 as being incomplete were Robert Ciotuzynki, Jack Ciotuzynki, Mark Ciotuzynki, and Rosa Ramona. There are no signatures for these names. They are printed and it is clear the same person printed each name. They were properly removed from the list of eligible petition signatures. The other 3 removed as incomplete are on Page 11 of City's Exhibit 9, Lines



4, 5, and 6. No address is listed and these names were properly not counted as valid signatures on the petition.

Twenty-nine signatures were not allowed by the City on the basis that the individual was not on the voter list. The following signatures were not in the list of eligible voters and were properly stricken and not counted in this petition:

1. Tabatha Garza of 3129 N. Parkside on Page 3, Line 4 of City's Exhibit 9
2. Silvia Lymis of 3114 N. Parkside on Page 3, Line 9 of City's Exhibit 9
3. Sabina Leszman with an unlisted address, probably 3127 N. Luna, on Page 4, Line 18 of City's Exhibit 9
4. Jerzy Telecki of 3106 N. Parkside on Page 5, Line 4 of City's Exhibit 9
5. Jaime Cabrea of 3047 N. Parkside on Page 6, Line 18 of City's Exhibit 9
6. Cynthia Morales on Page 6, Line 25 of City's Exhibit 9
7. Ovido Monterroso on Page 7, Line 2 of City's Exhibit 9
8. Lionel Sanchez on Page 11, Line 2 of City's Exhibit 9
9. Stanislawa Wypyn of 5647 N. Wellington on Page 6, Line 20 of City's Exhibit 9
10. Marity Grabwes of 3110 N. Luna on Page 11, Line 3 of City's Exhibit 9
11. ? (unable to read name) of 3048 N. Parkside on Page 11, Line 8 of City's Exhibit 9
12. ? (unable to read name) of 3134 N. Parkside on Line Page 11, Line 10 of City's Exhibit 9
13. Jose Sanchez of 3105 N. Luna on Page 11, Line 13 of City's Exhibit 9
14. Joe Amnicki of 3144 N. Luna on Page 12, Line 1 of City's Exhibit 9
15. Jacek Dzik of 3140 N. Luna on Page 12, Line 2 of City's Exhibit 9
16. Irena Minkiewicz of 3138 N. Luna on Page 12, Line 3 of City's Exhibit 9
17. Ma Elena Hernandez of 3110 N. Luna on Page 12, Line 6 of City's Exhibit 9
18. Maria Felix of 3055 North Luna on Page 12, Line 10 of City's Exhibit 9

Danita Kozak of 5619 W. Barry on Page 15, Line 1 of City's Exhibit 9, should be reinstated as an eligible petitioner.

Robert Garza's signature on Page 3, Line 11 of City's Exhibit 9 was properly stricken as a duplicate of his signature on Page 3, Line 7 of City's Exhibit 9, which was counted. The fact

that the color blue in itself referenced individuals not on the voters list does not prevent this Commission, at this de novo hearing, from upholding the removal of the signature as a duplicate.

Helen Ciotuszynski's signature on Page 5, Line 1 of City's Exhibit 9 was properly stricken as a duplicate of her signature on Page 3, Line 10 of City's Exhibit 9.

Lucyna Binkul's signature on Page 5, Line 9 of City's Exhibit 9 was properly stricken as a duplicate of her signature on Page 2, Line 21 of City's Exhibit 9.

Miguel Guaman's and Jan Binkul's signatures on Page 6, Lines 22 and 23 of City's Exhibit 9 were properly stricken as duplicates of their signatures on Page 5, Lines 7 and 8 of City's Exhibit 9.

Jeanine Baran's signature on Page 11, Line 9 of City's Exhibit 9 was properly stricken as a duplicate of her signature on Page 6, Line 24 of City's Exhibit 9.

Heriberto Acevedo's signature on Page 12, Line 11 of City's Exhibit 9 was properly stricken as a duplicate of his signature on Page 7, Line 8 of City's Exhibit 9.

Jose Rios of 3042 N. Parkside on Page 11, Line 7 of City's Exhibit 9 was properly stricken as a duplicate of his signature on Page 6, Line 19 of City's Exhibit 9.

My count of signatures actually marked in blue on City's Exhibit 9 was 28, not 29 as set out in City's Exhibit 10. That reduces the total number of unapproved voters to 39. The petitioner is also given credit for Danita Kozak of 5619 W. Barry on Page 15, Line 1 of City's Exhibit 9, and for the signature of Irais Esparza at 3112 N. Luna on Page 4, Line 19 of City's Exhibit 9. These three additional signatures bring the total of good petition signatures to 105 which is still below the 123 needed signatures.

Based on a de novo hearing on this issue, the City has met its burden that the applicant has failed to present the required number of valid signatures on the petition for a late hour license.

The denial of the application for a late hour license is affirmed for the reasons set out in this decision.

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: March 19, 2015

Dennis M. Fleming  
Chairman

Donald O'Connell  
Member