

ARENA LAW OFFICES, L.L.C
1110 NORTH OLD WORLD THIRD STREET
RIVERFRONT PLAZA, SUITE 515
MILWAUKEE, WISCONSIN 53203

(414) 645-6100
FAX (414) 645-3500

ANDREW P. ARENA

January 12, 2012

CITY OF MILWAUKEE
12 JAN 13 AM 8:45
RONALD D. LEONHARDT
CITY CLERK

Ronald D. Leonhardt
City Clerk
City Hall, Room 205
200 East Wells Street
Milwaukee, WI 53202-3570

Re: STP, Inc. d/b/a Narrow Lane
Howard Tice, agent
Address 5526 W. North Avenue

Dear Clerk:

Pursuant to Chapter 90 of the City of Milwaukee Ordinances the STP, Inc. and its Registered Agent, Howard Tice, by their Attorney, Arena Law Offices, LLC files these written objections to the findings of fact and conclusions of law entered by Alderman James Bohl on January 6, 2012. The Licensee also files a motion for the Gentlemen from the 10th Aldermanic District to recuse himself, or be removed from participating in these proceedings further as a result of his advocating for the non-renewal of the license at the Committee hearing.

The Licensee objects to the findings of fact and specifically objects that the items in the Police Report and the testimony supply an adequate basis for a 60 day suspension. The Licensee submits that two months without revenue is an extremely harsh punishment in light of the record. If discipline is to be progressive a shorter suspension would serve justice and certainly send the appropriate message. The minimum suspension by statute and the MCO is 10 days, which would be more appropriate in consideration of the fact that the Licensee has had the license at 5526 W. North Avenue for 14 years and he has recently spent \$150,000.00 remodeling and adding a state of the art kitchen that includes new pizza ovens, grills, fryers, coolers and freezers .

As to item 5A. The reason that there was over capacity of patrons was due to the lack of response by the Department of Neighborhood Services in providing an occupancy permit for newly completed construction, that was necessary for the addition of a kitchen and new bathrooms. This matter has now been corrected and under the new occupancy permit there would not be an over capacity violation.

The Licensee has spent about \$150,000 installing a new kitchen and seating. This was done to become a Restaurant. The kitchen has pizza ovens, chicken fryers, flat grill, and fryers. All of this equipment is brand new, and hopefully will provide an opportunity for the licensee to be a successful business, within the neighborhood. The food license was approved at a hearing in July 2011, which was a meeting that

had the same neighbors testify concerning complaints of noise and litter. The true reason for the complaints is a mis-informed belief that, Howard Tice, is not operating the establishment. There actually was no evidence or proof that Mr. Tice is not in charge of STP, Inc. Mr. Tice has been the registered agent for 14 years and as the sole shareholder of the licensee, is the person responsible for the operation of the establishment. Mr. Tice did hire a contractor to complete the remodeling of the building and has had to borrow money to complete that project. The contractor has met with the building inspectors and health inspectors in order to complete the building project, which is the extent of his involvement in the operation. This individual even met with the Alderman of the 10th District to get assistance in getting the inspectors to finish there inspection.

The neighbors that testified basically stated the same things as they did in July. The two residents that testified, when presented with a satellite map conceded that they did not live close enough to the location to actually see it from their homes. The third witness owns a business across the street but conceded in an e-mail to Alderman Murphy, which was submitted into evidence. This e-mail stated that the problems she experienced in the summer were no longer an issue. This individual complained of litter in her alley and a broken window. The licensee submits that there is no actual reliable proof that these things were caused by the Narrow Lane. Since the licensee became aware of these issues the area behind that business is swept and cleaned nightly regardless of where the trash came from, even if it is from the Taco Bell. The other two neighbors testified to noise and cars. One neighbor claimed to be afraid but is apparently willing to walk her dog past the Narrow Lane on a regular basis. Both concede that the issues have improved, however, they attribute the change to the weather and not the efforts of the Licensee. The Licensee has begun to concentrate on being a Restaurant and keeps the bar business very low key. The lack of new actual incidents in police reports validate that there has been great improvement. There have been no new calls from the two neighbors that testified in opposition to the license. Any police call or issue since July, clearly would have been brought before the committee.

There were three neighbors that lived within one block of the establishment that stated they did not observe the disturbances complained of. One of these individuals owned a business within a half of a block, and a home one block away. His testimony was clear that he didn't believe the litter was caused by the Narrow Lane, and that there was no other noise problems created by the way that the Licensee was operating the establishment. The other two witnesses live right across the street from the Narrow Lane and testified that there are not noise issues.

As to paragraph 5A. And 5C. All problems associated with the building improvements and occupancy permits have been corrected. Due to problems with the inspection department there were delays caused by an inspector that was slow to complete the process, and continually finding new things to order corrected. This was a problem that was brought to the attention of Alderman Murphy without any assistance from him. As a result the contractor, had to have a new inspector assigned to complete the process. This was finally done and the food license was issued on December 8, 2011. The new occupancy is 99, and the licensee is planning to promote the Restaurant aspect of the business.

As to 5B one witness (Jinright) testified to this incident. The manager of the establishment testified that the Narrow Lane closed prior to the individuals arriving on there motorcycles and they were denied entry. One of the motorcycles did not start and the noise was created when the friends of the individual tried to jump start his motorcycle. Since that incident the manager testified that he has told individuals not to patronize the establishment with motorcycles.

As to 5D Ms. Jinright actually offered no new testimony since her July testimony. She did admit that she can not see the establishment but is aware of the things she talked about because she walks her dog in the area. Her statements that her neighborhood is not safe do not seem credible when she claims that she is still walking her dog on a route that takes her past the Narrow Lane. This witness actually testified that she concedes that there has been an improvement but only attributes this to the change in weather.

As to 5E, this neighbor lives one house further away than Jinright and she concedes that she can not see the Narrow Lane from her home. This testimony mirrored her testimony in July. As to 5F, Amy Turim conceded in an e-mail to Alderman Murphy that the previous incidents she had testified were no longer being experienced. Alderman Murphy actually contacted this individual to gather evidence against the licensee. He clearly demonstrated prejudice and favoritism for three neighbors over the Narrow Lane and 4 neighbors that testified in favor of the Narrow Lane. Ms. Turim wrote him back and stated that "Since that hearing, we have not experienced the same issues we were having with the tavern."

The final opponent to the License was Alderman Murphy. One of his main issues was that in his mind the Licensee did not provide his letter to the licensee's manager. Secondly Murphy's complaint, that the Licensee did not respond to the letter. The letter is attached hereto and demonstrates that in fact that the Licensee was not requested to contact the Alderman. The letter was a statement that there were still complaints, which must be questioned in light of the Amy Turim's e-mail where she states her experience has changed. Alderman Murphy wrote his letter on October 14, 2011 and the Alderman concedes that the licensee met with the Alderman and presented a food menu to him. The evidence at the hearing was that the inspector did not clear the work orders until December 6, 2011 and the food license was issued on December 8, 2011. Once the Licensee was able to sell food he did arrange a meeting with the Alderman. Alderman Murphy's issue seems to be that this all did not take place quickly enough, however, he was aware of issues of delay caused by the Department of Neighborhood Services which were brought to his attention. The evidence was that the Manager of the establishment was aware of neighbor complaints and he was addressing them by changing the music being played in the coin operated juke box, and cleaning the neighborhood. The fact that a letter from Alderman Murphy was not given to him, really has no relevance. Finally, the letter does not request that Mr. Tice contact the Alderman and it seems the Alderman believes that he should have. In actuality Mr. Tice was responding by addressing the issues. He completed the connections to the video surveillance system. He instructed the manager to monitor the noise and clean the trash. The manager testified that he asked people not to come to the location by motorcycle. The fact that these improvements were made are evidenced in the record. The police department conceded that they were instructed to monitor the location in an effort to establish negative evidence against the license to non-renew the license, which resulted in no credible evidence that was reported in the Police report. The neighbors conceded that changes had occurred in an e-mail and in testimony. Although, they believe it is due to the weather, which is not credible because there still were plenty of nights with mild weather in September, October, and even November.

The record in this case does not warrant a 60 day suspension. The Licensee has addressed the issues raised in July and the evidence supports that fact. The capacity has been increased and a food license has been issued. This will result in more traffic, but not necessarily noise or unruly behavior. The City of Milwaukee should embrace the investment made into the business and foster an opportunity for success. The only way this can be done is to reconsider the harshness of the suspension. The Licensee submits that 10 days would be more reasonable.

Respectfully Submitted this 12th day of January, 2012.

By: Andrew P. Arena
Attorney Andrew P. Arena

MICHAEL J. MURPHY
ALDERMAN, 10TH DISTRICT

City Hall, Room 205
200 East Wells Street
Milwaukee, WI 53202

Phone (414) 286-3763
Fax (414) 286-3456

e-mail: mmurph@milwaukee.gov
website: www.milwaukee.gov/district10



CHAIR:
Finance & Personnel Committee
Employees' Retirement System Investment Committee
Housing Trust Fund Advisory Board
Milwaukee Arts Board

MEMBER:
Steering & Rules Committee
Zoning, Neighborhoods & Development
Deferred Compensation Plan Board

October 14, 2011

Howard Tice
1031 South 76th Street
West Allis, WI 53214

STP, Inc.
Narrow Lane
5526 West North Avenue
Milwaukee, WI 53208

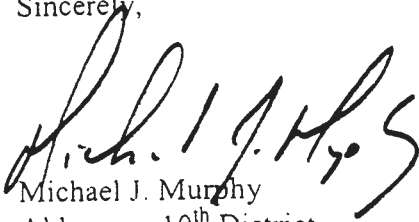
Dear Mr. Tice,

My office and Milwaukee Police District Three continue to receive complaints regarding your establishment at 5526 West North Avenue, Narrow Lane Tavern. The complaints include loud disturbances when patrons leave the bar at closing time, broken glass bottles found daily in the alley behind your property, public urination, and suspected drug dealing directly pertaining to your patrons. These same concerns were raised at your Licenses Hearing on July 11th. At that hearing, and at our meeting on Friday July 22nd, you indicated that you would address and remedy these issues. The continuation of these disturbances concerns me greatly.

At the Licenses Hearing on July 11th the committee granted approval of your Food Dealer's License which was subsequently approved by the Common Council. You testified that you planned on putting more emphasis on food service and less on alcohol. You have not yet supplied me with a menu as you promised. Furthermore, as of today's date, you have not yet paid for your Food Dealer's License. This indicates to me that you mislead both your neighbors and the Common Council on your true intentions at this establishment.

Your Class B Tavern License expires on January 31, 2012. The Licenses Committee recommendation for renewal, non-renewal or suspension of your license is based upon evidence regarding your actions or lack of action to abate problems associated with your premises or your patrons. It also takes into consideration neighborhood and aldermanic testimony and police reports. As the Alderman representing this neighborhood, I will support the majority of the neighbors to the fullest extent possible. This letter will be submitted to the Licenses Division and become part of your permanent record.

Sincerely,



Michael J. Murphy
Alderman, 10th District

Cc: Licenses Division
Captain Brunson, Milwaukee Police Department, District 3
Officer Brown, Community Liaison Officer, District 3

CITY OF MILWAUKEE COMMON COUNCIL

In re the Class B License of STP, Inc.
d/b/a "Narrow Lane"
5526 West North Avenue

MOTION TO RECUSE AND REMOVE

Now Comes the Licensee's by their Attorney Arena Law Offices, LLC, by Attorney Andrew P. Arena and hereby moves the Honorable President of the Common Council and the Common Council for the City of Milwaukee to remove the Gentleman from the 10th District, Alderman Michael Murphy, from participating in the hearing concerning Narrow Lane. Pursuant to due process of Law Alderman Murphy should not be allowed to make any statements to the body as a whole, and he should not be allowed to make any motions or vote on any motions in this matter. The reasons for this motion are stated as follows:

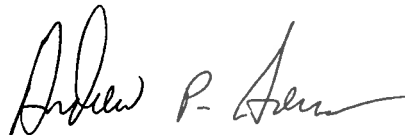
1. At the License Committee Hearing on January 4, 2012 Alderman Murphy clearly and passionately advocated for the license to be non-renewed and this position was expressed as a witness. This alderman also acted as a prosecutor by arranging for Police Officers to be present and offer testimony, and then to question them consistent with his position that the License should be non-renewed. The Alderman took his position against the Licensee prior to all evidence being received by the Committee and previous to a decision being made by the Committee. The Alderman sided with three neighbors ignoring at least 5 other neighbors who testified that the complaints were not valid.
2. The State Law under Chapter 125, et. seq. And Chapter 90 of the ordinances clearly establish that the process concerning this license is a quasi-judicial process and that the Licensees

are entitled to due process of law.

3. The State Supreme Court in Marris v. City of Cedarburg, 176 Wis.2d. 14, 1993 was a case where a Municipal Corporation had a chairman of its Zoning Board make statements at a hearing that demonstrated that he had pre-judged the case and thereby denied the party the right to have the decision decided by an impartial board. As the Licensees are entitled to a fair and impartial hearing under concepts of due process and fair play it would not be fair to have an Alderman that has clearly established a bias against them be allowed to vote and make motions at the Common Council hearing despite testifying and advocating for non-renewal of the license.

4. To allow Alderman Murphy to have the right to make a statement to the Common Council would also not be appropriate, as the City Attorneys Office has the obligation to address objections timely filed by the applicant, and to advocate for the position of the Committee. Alderman Murphy should not be allowed to address the Council unless he has filed a written objection pursuant to the ordinance. Alderman Murphy should not be allowed to advocate his desires and bias at this point of the proceeding. He was heard in the fact finding hearing and the procedure in the ordinances does not allow for more evidence to be taken. As for commentary on the evidence the City is represented by an Attorney. Alderman Murphy should not have another chance to express his bias at the expense of the due process rights of the Licensee. His district was adequately represented by him at the License Committee Hearing.

Respectfully Submitted this 12th day of , 2012



Andrew P. Arena Attorney for Narrow Lane