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City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



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Assistant City Attorneys

April 14, 2010

Mr. John Barrett
Clerk of Circuit Court
910 North Ninth Street
Milwaukee, WI 53233

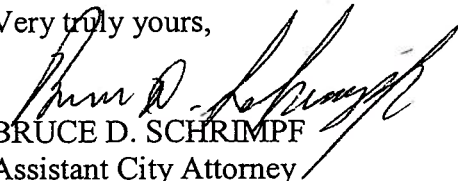
Re: *Stojan Coralic v. City of Milwaukee, et al.*
Case No. 10-CV-1922

Dear Mr. Barrett:

Enclosed for filing please find the original and one copy of the Defendants' Notice of Appeal, Statement on Transcript and Docketing Statement in the above-referenced matter. Also enclosed are the appropriate checks for filing of these matters.

By copy of this letter, the Clerk of the Court of Appeals is also being served, by mail, with a copy of the Notice of Appeal, a copy of the Statement on Transcript, and the original and one copy of the Docketing Statement. By copy of this letter, opposing counsel is being served, by mail, with copies of the Notice of Appeal, Docketing Statement, and Statement on Transcript.

Very truly yours,


BRUCE D. SCHRIMPF
Assistant City Attorney

BDS:wt:156838

Enclosures

c: David Schanker
Honorable Timothy G. Dugan
Alderman Willie Hines
Alderman Tony Zielinski
Common Council Members
Maistelman & Associates

1078-2010-467

OFFICE OF THE CITY ATTORNEY

Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551 • Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

Stojan Coralic)

))

(party designation) Plaintiff)

-vs-)

City of Milwaukee, et al.)

))

(party designation) Defendants)**Notice of Appeal**Case No. 10CV1922

Notice is hereby given that (name of party filing appeal) City of Milwaukee, et al. appeals to the Court of Appeals, District I, from [choose one] the whole a part of the final judgment or order, entered on (date) 3/5/10 in the circuit court for Milwaukee County, the Honorable (name of Judge) Timothy G. Dugan, presiding, in favor of (name of party opposing appeal) Stojan Coralic, and against (name of party filing appeal) City of Milwaukee, et al., wherein the court (describe judgment or order) reversed the decision of the Milwaukee Common Council and remanded the matter,

NOTE: If this is an appeal under §809.30 or §809.32, also include the following (see §809.10(1)):

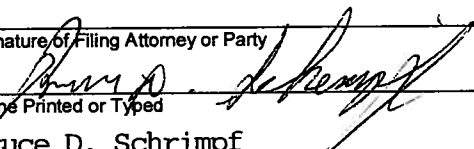
- If a postconviction motion was not filed, state the date of service of the last transcript or service of a copy of the circuit court case record.
- If a postconviction motion was filed, state the date of the order deciding the postconviction motion(s).
- If the Court of Appeals established any other filing deadline, state it.

If counsel is appointed under ch. 977, a copy of the order appointing counsel should be attached to the notice of appeal.

This [choose one] is is not an appeal within Wisconsin Statutes §752.31(2).

This [choose one] is is not an appeal to be given preference in the circuit court or court of appeals pursuant to statute.

Date: April 14, 2010

Signature of Filing Attorney or Party 	Telephone Number 414-286-2601
Name Printed or Typed Bruce D. Schimpf	State Bar Number (if applicable) 01013797
Address 200 East Wells Street, Ste. 800, Milwaukee, WI 53202	

This completed form must be *filed* with the clerk of the circuit court in which the judgment or order appealed from was entered. In addition, copies of this completed form must be served upon the following:

1. the Clerk of the Court of Appeals;
2. opposing counsel; and
3. any other party.

Case Caption (Case Name) Stojan Coralic v. City of Milwaukee, et al.	<h2 style="margin:0;">DOCKETING STATEMENT</h2> Circuit Court Case No. <u>10CV1922</u> Case Number Issued by Court of Appeals _____
---	---

Appellant(s) (Cross-Appellant) Stojan Coralic	Attorney's Name and Address Matthew Lerner 5027 W. North Avenue Milwaukee, WI 53208 Attorney's Telephone Number 414-908-4254	(Space for file stamp.)
Respondent(s) (Cross-Respondent) City of Milwaukee, et al.	Attorney's Name and Address Bruce D. Schimpf City Attorney 200 E. Wells St., Ste. 800 Milwaukee, WI 53202 Attorney's Telephone Number 414-286-2601	

CRITERIA FOR EXPEDITED APPEALS

- This Docketing Statement is used solely to determine whether an appeal should be placed on the expedited appeal calendar. The respondent is not required to respond to the Docketing Statement. Generally, an appeal is appropriate for the expedited appeal calendar if:
 1. no more than 3 issues are raised;
 2. the parties' briefs will not exceed 15 pages in length; and
 3. the briefs can be filed in a shorter time than normally allowed.
 These requirements can be modified somewhat in appropriate cases.
- Parties should assume that the appeal will proceed under regular appellate procedure unless the court notifies them that the appeal is being considered for placement on the expedited appeals calendar.

JURISDICTION

Has judgment or order appealed from been "entered" (filed with the clerk of circuit court)?
 Yes No If yes, date of entry March 5, 2010
 Is appeal timely? (See §808.04, Wisconsin Statutes)
 Yes No
 Is judgment or order final (does it dispose of the entire matter in litigation as to one or more of the parties)?
 Yes No (If "no", explain jurisdiction basis for appeal on separate sheet.)

NATURE OF ACTION – Briefly describe the nature of action and the result in circuit court:

Review of a discretion decision of the Milwaukee Common Council to revoke a Class "B" Tavern license pursuant to Wis. Stat. sec 125.12(2)(ag)1.-4.

ISSUES – Specify the issues to be raised on appeal: (Attach separate sheet if necessary.)

(Failure to include any matter in the docketing statement does not constitute waiver of that issue on appeal. The court may impose sanctions if it appears available information was withheld. Court of Appeals Internal Operating Procedures, sec. VII(2)(b).) (1) Was there a sufficient basis in the record to effectuate revocation of the Class "B" Tavern license of the appellee?
 (2) Was Ald. Zielinski entitled to vote on the floor of the Council in conformance with the duties imposed upon him as a member of the governing body of the City of Milwaukee under the provisions of Wis. Stat sec. 125.12(1)(ag) and (2)(b)3?

STANDARD OF REVIEW – Specify the proper standard of review for each issue to be raised, citing relevant authority:

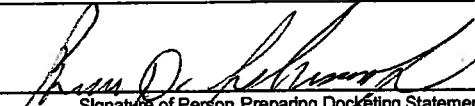
- 1. Error of law in the application of Lamar Central Outdoor, Inc. d/b/a Lamar Advertising of Milwaukee v. Board of Zoning Appeals of the City of Milwaukee, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87.
- 2. Failure to accord proper deference to the legislative body and failure to search the record for substantial evidence of the legislative findings. Lamar Central Outdoor, Inc. d/b/a Lamar Advertising of Milwaukee v. Board of Zoning Appeals of the City of Milwaukee, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87. See attached supplemental sheet

Do you wish to have this appeal placed on the expedited appeals calendar? (See Criteria For Expedited Appeals.)
 Yes No If "no", explain: Does not apply to the criteria for expedited appeals as set forth in the procedures for expedited appeals.

Will a decision in this appeal meet the criteria for publication in Rule 809.23(1)?
 Yes No
 Will you request oral argument?
 Yes No

<u>Party</u>	<u>Attorney's Name and Telephone Number</u>	<u>Reason for not Participating</u>

Are you aware of any pending or completed appeal arising out of the same or a companion trial court case that involves the same facts and the same or related issue?
 Yes No Name of Case _____
 Appeal Number _____



 Signature of Person Preparing Docketing Statement
 Bruce D. Schrimpf

 Name Printed or Typed
 April 14, 2010

 Date

Appellant Note:

- You MUST** attach a copy of the following trial court documents to this form:
- 1. Trial court's judgment or order and findings of fact.
 - 2. Conclusions of law.
 - 3. Memorandum decision or opinion upon which the judgment or order is based.
- You MUST** also furnish all opposing counsel with a copy of this completed Docketing Statement and attached trial court documents.

Standard of Review (continued):

3. Was the decision of the Common Council capricious or arbitrary?
If not it must be affirmed. *Ruffalo v. Common Council of Kenosha*,
38 Wis. 2d 518, 525, 157 N.W.2d 568 (1968).
-

STATE OF WISCONSIN

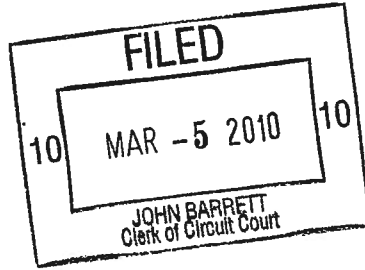
CIRCUIT COURT
Civil Division

MILWAUKEE COUNTY

Stojan Coralic, d/b/a The Brew House

Plaintiff,

vs.



Case No. 10CV1922

City of Milwaukee, et al.,

Defendants,

Decision on Revocation of Tavern License

This matter is before the court on certiorari review of a decision by the City of Milwaukee Common Council to revoke the liquor license of The Brew House (Brew House). The court issued a temporary restraining order and then scheduled the matter for hearing. At the hearing on February 19, 2010 the parties introduced evidence through testimony of witnesses in addition to the record of the proceedings before the Licenses Committee and the Common Council.

For the reasons stated below the court finds that the Licenses Committee and the Common Council did not act according to law by failing to provide plaintiff with the requisite due process in revoking the Tavern License. Therefore, the court will vacate the order revoking the Tavern License and remand the matter to the Licensing Committee for an appropriate hearing consistent with the court's ruling.

Applicable Standard of Review

The parties agree that the standard of review on certiorari review by the court is limited to a determination of whether:

1. The administrative body kept within its jurisdiction;
2. Whether it acted according to law;
3. Whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and
4. Whether the evidence was such that it could reasonably make the order or determination in question.

The reviewing court may not substitute its judgment for the discretion of the administrative body.

The parties further agreed that although certiorari review is generally based upon the record before the administrative agency that it was appropriate for the parties to introduce additional evidence before the court during the hearing. However, they agreed that such evidence would be limited to evidence that was relevant to the four factors stated above.

This court's decision is based upon the second factor: Whether the administrative bodies acted according to law. "The phrase 'acted according to law' has been interpreted as including 'the common-law concepts of due process and fair play.'" *Marris v. City of Cedarburg*, 176 Wis. 2d 14 (1993).

Facts Relevant to the Court's Decision

Although the parties argue the facts about the sufficiency of the evidence before the Licenses Committee and the Common Council the court is limiting its reference to facts that involve the issue of whether Brew House was provided a fair hearing.

Pursuant to the applicable city ordinance Alderman Tony Zielinski initiated a sworn complaint regarding the Brew House entitled "sworn charges for revocation of license" requesting that the tavern license be revoked. The complaint identified the reasons for the requested revocation and specified facts that he asserted justified the revocation. The Licenses

Committee held a hearing on the complaint on January 19, 2010. This was an evidentiary hearing at which witnesses testified before the committee.

At the hearing Alderman Zielinski participated as the complainant and advocate for revocation. At the beginning of the hearing the Chair of the Committee Alderman James Bohl stated, "Alderman Zielinski, we will – you are the complainant, we will turn this over to you." Ex. 9, p. 7. Alderman Zielinski advised the chairman that he wanted to defer his comments until after people in the audience had an opportunity to testify regarding their first hand knowledge. Ex. p.11. He then proceeded to call witnesses to testify. However, chairman Bohl was in charge of the hearing. When the Brew House's attorney objected to the testimony of a police captain it was Alderman Zielinski who argued that the testimony was relevant. Alderman Zielinski specifically questioned the captain asking if he believed the license should be revoked. Additionally, when the Brew House called witnesses to testify Alderman Zielinski cross examined those witnesses.

Finally, the chairman stated "I'm going to allow closings to be provided here by Alderman Zielinski and Mr. Shikora." He then allowed Alderman Zielinski to proceed first because "...you're making the case here..." Ex. 9, p. 93. Mr. Zielinski then proceeded to make a closing argument in favor of revoking the license. Although he is a member of the Licenses Committee, at the time of the vote by the committee, Alderman Zielinski did not vote. The Brew House does not object to Alderman Zielinski's conduct or role at the Licenses Committee.

Subsequent to the vote by the committee in favor of revoking the Tavern License the City Attorneys Office was directed to prepare findings of facts and conclusions of law in support of the revocation of the license. The draft of the findings and conclusions was reviewed by a staff assistant for the committee and Chairman Bohl's signature was electronically placed on the document. Neither he nor any member of the committee reviews the findings and conclusions

prior to his signature being placed on them. Copies of the findings are then distributed to all the members of the Common Council.

The Common Council held a hearing on February 9, 2010. Alderman Zielinski did not play a significant role in the discussions regarding the Common Council's vote, but he did vote in favor of revocation of the license. At the evidentiary hearing before this court Chairman Bohl testified that as a member of the Common Council he voted to revoke the tavern license not only for the reasons stated in the findings and conclusions of the committee, but based upon all the evidence introduced before the committee.

The Licensing Committee's Findings were Not Complete

The Brew House raised other issues regarding the hearing before the Licenses Committee, but the court finds that the committee's findings and conclusions were not complete and the court cannot determine if those findings formed the basis for the committee's vote in favor of revocation or if the committee relied on additional facts. In *Lamar Cent. Outdoor, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, ¶32, the court explained that the decision of the administrative body must contain the reasons for the action taken by the body. The court went on to state that "Without a statement of reasoning, it is impossible for the circuit court to meaningfully review a board's decision..." ¶32

In this case the Licenses Committee does not review or sign the findings and conclusions of the committee which are drafted by the City Attorneys Office. Although each member of the committee receives a copy of the findings prior to the Common Council hearing on the issue and each Alderman must state on the record that they have read the findings, this court cannot say whether the findings accurately reflect the decision of the committee. At the evidentiary hearing before this court Chairman Bohl testified that he did not vote in favor of revocation based solely on the findings of fact in the committee's decision, but rather upon all the facts introduced at the

hearing before the committee. Alderman Robert Puente also testified before the court and stated that he voted to revoke the tavern license based upon the findings of the City Attorneys Office, but that based on his experience as an alderman, not all the evidence makes it into the findings. He however was not a member of the Licenses Committee but he did state that he saw the testimony and video tape taken by the citizen.

Therefore, neither this court nor Brew House can determine what facts the committee relied on in support of its vote to revoke the tavern license. Due process and fair play require that the administrative body state the reasons for its decision in fairness to the party subject to the vote and so that the circuit can meaningfully review that decision.

Other objections that Brew House raises to the committee's hearing do not invalidate the committee's hearing process. Alderman Zielinski properly signed the complaint. It was filled with both information that he personally knew to be true and also information that he stated upon information and belief. Both are permitted by city ordinance. Therefore, there were no defects in the complaint.

The committee may rely on hearsay statements in making its decision. However, uncorroborated hearsay alone does not constitute substantial evidence. In *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, 278 Wis. 2d 111, 136, the court explained that "The rule that uncorroborated hearsay alone does not constitute substantial evidence allows an agency to utilize hearsay evidence while not nullifying the relaxed rules of evidence in administrative hearings. The rule prohibits an administrative agency from relying *solely* on uncorroborated hearsay in reaching its decision." The evidence before the committee was a mix of hearsay and testimony upon personal knowledge.

The Brew House also objected to the introduction of a video tape of an incident outside the Brew House. It was brought to the hearing by a witness who observed the incident and was

going to testify about the incident in any event. The complaint identified the incident as a basis for revoking the tavern license. Due process requires adequate notice of the charges or reasons for revocation; it does not require prior notice of all evidence that would be introduced.

The Vote by the Common Council was Tainted by Alderman Zielinski's Participation
and Votes of the Committee Members on Facts not in the Findings

Due process requires an impartial decision maker. *State ex rel DeLuca v. Common Council*, 72 Wis. 2d 672 (1976). However, an administrative body may qualify as an independent decision maker in respect to the merits of charges that it initiated and investigated. *Withrow v. Larkin*, 421 U.S. 35 (1975). The objector to the impartiality of a body must overcome "...the presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden." *Deluca*, id. at 684.

In *Deluca* the court reasoned that if the combined charging and investigation functions are equivalent to the role of a judge who makes findings of probable cause and later hears the case on the merits, the administrative body may be impartial. However, as noted in *Deluca* "Nevertheless, the combination of bringing the charges and being an adjudicator could result in an intolerably high risk of unfairness if it could be said that this essentially converts the charge bringer into the role of prosecutor." Id. at 688. The court went on to note that the Supreme Court in *Larkin* held that there may be circumstances that "...raise a sufficiently great possibility that the adjudicators would be so psychologically wedded to their complaints that they would consciously or unconsciously avoid the appearance of having erred or changed position." Id. at 688.

Additionally, in *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 26 (1993), the court held that “If any board member prejudged the facts or the application of law, an impermissibly high risk of bias was created.” The court further stated that “A clear statement, suggesting that a decision has already been reached, or prejudged, should suffice to invalidate a decision.” *Id.* at 26.

In this case, Alderman Zielinski’s role before the Licenses Committee was that of the prosecutor. Because he fulfilled that role he properly recused himself from participating as a committee member and from voting. However, as a member of the Common Council Alderman Zielinski was required to recuse himself from participating in the hearing on the revocation of the tavern license which he prosecuted before the committee. He investigated the complaints, brought the charges and prosecuted the hearing, advocating for revocation of the license. At that hearing he made a strong argument imploring the committee to revoke the license.

His combined roles and strong statements advocating revocation of the tavern license constitute clear statements suggesting that he already reached his decision and prejudged the matter before the hearing began. He should not have participated in the hearing before the Common Council and his participation taints the vote of the entire council.

Additionally, as noted above, Chairman Bohl testified that his vote before the Common Council was not limited to the findings and conclusions that stand as the decision of the Licenses Committee. Rather, he stated that his vote was based upon all the evidence at the hearing, not just the findings and conclusions with his signature. Alderman Puente also testified that votes are not always based solely upon the findings and conclusions because all the evidence does not always make its way into the findings. This does not mean that the committee must identify all the evidence introduced at the hearing and state whether it is relying on each bit of evidence. For instance Brew House argues that the findings are defective because they do not include a

statement by the police captain that things had improved. That evidence need not be included, but the entire factual basis on which the committee relies for reaching its decision must be identified and members cannot rely on other information not included within the findings.

As noted above the committee's decision must identify the basis for its decision in fairness to the parties involved and so the circuit court can meaningfully review the decision. Here, neither the court nor Brew House can discern the facts the Licenses Committee or its members relied on in voting to revoke the tavern license in their votes at the committee level or at the board level.

NOW THEREFORE, IT IS ORDER, for the reasons stated above, that:

1. The decision of the Common Council revoking the Brew House tavern license is vacated;
2. The decision of the Licenses Committee recommending revocation of the Brew House tavern license is vacated; and
3. The matter is remanded to the Licenses Committee for a new hearing in conformance with this court's decision.

March 5, 2010

By the Court:
TIMOTHY G. DUGAN
Hon. Timothy G. Dugan
Circuit Judge Br. 10

FOR PURPOSES OF APPEAL THIS IS THE FINAL ORDER OF THE COURT, NO FURTHER ORDERS ARE CONTEMPLATED BY THE COURT, AND THE CLERK SHALL ENTER JUDGMENT BASED UPON THIS ORDER.

Stojan Coralic)
 _____)
 _____)
 (party designation) Plaintiff)
 _____)
 -vs-)
 _____)
City of Milwaukee, et al.)
 _____)
 _____)
 (party designation) Defendants)

Statement on Transcript

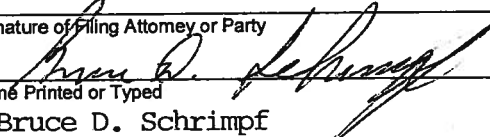
Case No. 10CV1922

To: Clerk of the Court of Appeals (original)
 Circuit Court Clerk (copy)
 Parties' Attorneys (copies)

Check one:

- A transcript is not necessary for prosecution of this appeal.
- All transcripts necessary for this appeal are already on file and satisfactory arrangements with the court reporter(s) for service of a copy of the transcript(s) on the other parties have been made.
- Satisfactory arrangements with the court reporter(s) have been made for the filing and service of the following transcript(s), as certified below by the court reporter: (Specify transcript(s) requested and dates of proceedings, for example; "pre-trial proceedings, 9/24/08," "trial, 10/14/08," etc.)

Date: April 14, 2010

Signature of Filing Attorney or Party 	Telephone Number 414-286-2601
Name Printed or Typed Bruce D. Schrimpf	State Bar Number (if applicable) 01013797
Address 200 E. Wells Street, Ste. 800, Milwaukee, WI 53202	

The COURT REPORTER must complete the following certification only if the transcript(s) is/are not already on file:

COURT REPORTER:

I certify that on (date) _____ the above-designated portion(s) of the transcript(s) in (case name) (caption) _____, appeal no. _____, were requested and arrangements made for the payment of the costs of the transcript(s). The transcript(s) will be filed with the circuit court and served on the parties, pursuant to Wisconsin Statutes, §809.11(7), on or before (date) _____.

Signature of Court Reporter	Telephone Number
Name Printed or Typed	Court
Address	

NOTE: §809.11(7) requires a court reporter to return this signed statement to the appellant within 5 days after receipt.