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MILELE A. COGGS
ALDERWOMAN, 6TH DISTRICT

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- Library Board
- Neighborhood Improvement Development Corporation Board
- Special Joint Committee on the Redevelopment of Abandoned and Foreclosed Homes
- Steering and Rules Committee
- Wisconsin Center District Board

December 09, 2022

To the Honorable, the Common Council

Honorable Members:

Re: Common Council File Number 221159

Attached are written objections to file number 221159, Motion relating to the recommendations of the Licenses Committee relative to licenses, relating to a recommendation of:

Renewal with a ten (10) day suspension of the Extended Hours Establishments and Food Dealer licenses based on the aldermanic recommendation for Latherin Thomas Jr., for the premises located at 920 W North Av. ("Mc Donald's") in the 7th aldermanic district.

This matter will be heard by the full Council at its Tuesday, December 13, 2022 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached statement and materials.

Respectfully,

Milele Coggs, Chair
Licenses Committee

cc: All Council Members
City Attorney's Office
Common Council/City Clerk – License Division
CCF 221159



Melendez, Yadira

From: Michael S Maistelman <msm@maistelmanlaw.com>
Sent: Tuesday, December 6, 2022 8:47 AM
To: Owczarski, Jim; Melendez, Yadira
Cc: Cooney, Jim; Bobot Vince; Bobot Vince
Subject: THOMAS, JR, Latherin, Agent for "NEPTUNELTJR, LLC", "Mc Donald's" at 920 W NORTH Av.

Good morning Jim,

I had requested the findings of fact last Thursday but was told they were not available yet.

It appears they were available last Friday (bc they are dated 12/2) but I only received them after I requested a second time this morning.

Based upon the findings of fact that I received moments ago, McDonald's objects to the findings of facts and conclusion of law regarding the above-matter.

We will supplement this objection shortly.

Please confirm your receipt of this objection and confirm that we can be heard at the 11/13 Common Council meeting.

Thank you,

Michael

Attorney Michael S Maistelman
Sent from my iPhone



December 8, 2022

VIA E-MAIL

jowcza@milwaukee.gov

Mr. James R. Owczarski

City Clerk

City of Milwaukee

City Hall – Room 205

200 East Wells Street

Milwaukee, WI 53202

RE: *NeptuneLTJR, LLC – Application for Food Dealer & Extended Hours Establishment Renewal Licenses for McDonald’s at 920 W. North Avenue in the 15th District*

SUBJ: Common Council File No. 221159: Written Response to the Report of the Committee

Dear Mr. Owczarski:

We represent NeptuneLTJR, LLC in connection with the above-referenced matter, an application for renewal of the Food Dealer License and Extended Hours Establishment License for McDonald’s at 920 W. North Avenue. We understand that the Licenses Committee recommended renewal of the licenses following a ten (10) day suspension.

Pursuant to § 85-5-2, Milwaukee Code of Ordinances (“MCO”), legal counsel filed by email an objection to the Report of the Licenses Committee and Findings of Fact, Conclusions of Law and Recommendation. This letter is to supplement the licensee’s objections for consideration by the Common Council at its December 13, 2022 meeting. Along with Latherin Thomas, Jr. (owner/operator of McDonald’s and License Agent), my colleague Charles Polk, and local counsel for McDonald’s Corporation, I will attend the Common Council meeting to present this response and answer questions.

INCORRECT FACTS IN THE REPORT & KEY FACTS OMITTED

1. ***Findings of Fact #3 is Untrue.*** The November 16, 2022 notice did **not** contain any police report or neighborhood objections.
2. ***No Neighbors Testified in Objection.*** At the November 29th hearing, no neighbors appeared or testified in objection to renewal of the licenses.

3. **Findings of Fact #5.A. Contains Hearsay that is Without any Evidentiary Basis.** The testimony at the committee hearing included references to photographs and social media postings that was hearsay; further, no foundation was laid and no exhibits were entered into the record. The Chair actually instructed the committee not to consider such information (see also Findings of Fact #5.F.) yet the references improperly appear in Findings of Fact #5.A. such that, by inference, it appears that the committee did, in fact, consider such information.

Further, the testimony at the committee hearing included references to the District Alderman's observations at the restaurant, his opinions about the restaurant, his decision about a provisional license, and his recommended discipline for the restaurant. See Findings of Fact ##5.A., F., and G.-H. Such testimony was hearsay yet the references improperly appear in the Findings of Fact. Further, the motion for renewal with a suspension was primarily based upon the hearsay testimony. See Findings of Fact #5.I.

4. **Notices Sent by the City were Not Received or were Untimely.** Mr. Thomas did not receive any renewal notice for his licenses from the City of Milwaukee prior to their expiration. And, as of December 7, 2022, Mr. Thomas has not received the Findings of Fact, Conclusions of Law and Recommendation that are dated December 2, 2022.
5. **Timely and Corrective Action was Taken.** During an inspection by the Milwaukee Health Department on September 27, 2022, Mr. Thomas became aware that the licenses had expired. Mr. Thomas immediately went to City Hall to apply for renewal licenses and for a provisional license.
 - a. At the September 27th Milwaukee Health Department inspection, the restaurant earned an "A" grade and corrected anything that was noted by the inspector. Mr. Thomas began operating the restaurant in early 2021 and has extensively remodeled it and kept it clean (as evidenced by the inspection "A" grade).
 - b. At City Hall on September 27th, Mr. Thomas was told that a provisional license would be issued. Mr. Thomas never received notice that the provisional license was denied and had the good faith belief that he had a provisional license and could continue operating.
 - c. At the November 29th hearing, upon learning for the first time that the provisional license had been denied and that he was operating without a license, Mr. Thomas immediately apologized. See Findings of Fact ##5.D.
6. **The restaurant is closed.** The restaurant is currently closed meaning that as of the Common Council meeting to be held December 13, 2022, effectively an 8½ day disciplinary suspension will have been served.
7. **Support for the Employees.** Despite the current closure, Mr. Thomas has attempted to reassign his employees to shifts at other restaurants. His efforts to assist his employees

have included arranging transportation where employees do not have vehicles to drive to work at distant restaurants. A total of 47 employees work at the restaurant and imposing the 10 day suspension that will keep them out of work or prevent them from taking shifts near their residences, will create a hardship for each one of them at an important time of year, the holidays.

INCORRECT CONCLUSION STATEMENTS IN THE REPORT

Conclusions of Law #2 is Untrue. Conclusion of Law #2 states in part that the “Committee finds the **police report** and aldermanic objections as stated above to be true.” (emphasis added) While first incorporating by reference the hearsay objection cited above about the statements during the hearing, the Committee could not have made a finding that the police report was true because no police report was prepared or read into the record.

OBJECTIONS

We formally object to the Report of the Licenses Committee and the recommendation of renewal of the licenses but with a 10-day suspension under the following grounds:

- A. The committee failed to adopt the Report pursuant to § 85-4-6, MCO, and instead had the City Attorney’s Office prepare it, and allowed it to be forwarded to the full Common Council without the approval or consent of the entire Licenses Committee;
- B. The committee considered hearsay that is without any evidentiary basis;
- C. The Report contains incorrect factual and conclusion statements and key facts were omitted;
- D. Where no neighbors appeared or testified in objection to renewal of the licenses and no Police Department report was read into the record (because there were no incidents to report), the discipline recommended by the committee is unreasonable, unduly harsh, and punitive;
- E. The November 16, 2022 notice and enclosures provided insufficient notice for the possible reasons for imposition of penalties in violation of § 85-3, MCO;
- F. The committee failed to conduct a hearing on the severity of the penalty imposed separate from the hearing addressing whether the license renewal applications should be granted in the first instance, and failed to provide Mr. Thomas the opportunity to be heard on the issue of the severity of the penalty;
- G. The committee failed to follow its customary and required principles of progressive discipline when considering imposing sanctions such that it should have recommended a warning letter rather than a suspension (Wisconsin courts have noted that such principles are appropriate in order to satisfy the equal protection requirements of the U.S.

Constitution, 14th Amendment. *See Village of Menomonee Falls v. Michelson*, 104 Wis. 2d 137, 145-46, 311 N.W.2d 658 (Ct. App. 1981)); and

- H. The committee recommendation of renewal of the licenses with a 10-day suspension constitutes an unreasonable action and a violation of the vested rights possessed by the licensee in its licenses.

CONCLUSION

With the restaurant currently closed, the licensee is currently serving a suspension. Having apologized for operating without a provisional license – even though Mr. Thomas did not know that the provisional request was denied – it is unreasonable, unduly harsh, and punitive to extend what is an effectively 8½ day suspension by almost double that amount for an additional 10-days that will last until December 22, 2022, right before the holidays.

The Committee could have – and should have – recommended a lesser sanction in the form of a warning letter in light of all of the circumstances of this situation. We respectfully request that, notwithstanding the recommendation of the committee, the Common Council renew the licenses with a warning letter.

Please do not hesitate to contact me at 414-225-1484 or BRandall@AmundsenDavisLaw.com should you have any questions or wish to discuss this matter.

Very truly yours,

Amundsen Davis, LLC



Brian C. Randall

BCR:las

cc: *All Via E-Mail*
stasst5@milwaukee.gov
Ald. Russell W. Stamper II, 15th District
Mr. Dameon Ellzey, Legislative Assistant for 15th District
S. Todd Farris, Esq. – Deputy City Attorney
Mr. Latherin Thomas, Jr. – NeptuneLTJR, LLC d/b/a McDonald's
Charles E. Polk III, Esq. – Amundsen Davis, LLC
Michael S. Maistelman, Esq. – Co-Counsel for McDonald's
Vincent J. Bobot, Esq. – Co-Counsel for McDonald's