

**JAMES N. WITKOWIAK**

ALDERMAN, 12TH DISTRICT

December 9, 2005

To the Honorable, the Common Council

Dear Members:

Re: Common Council File 050811

Attached are written objections to the recommendation of nonrenewal, based on the police report, of the Class "B" Tavern and Tavern Amusement (Cabaret/Nite Club) license of Andrea Chavis for the premises at 6222 W. Fond du Lac Ave. ("Phoenix Bar and Grill") in the 2<sup>nd</sup> aldermanic district. (Committee vote: ayes: 3, noes: 2)

This matter will be heard by the full Council at its December 13, 2005 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached objections.

Respectfully,

A handwritten signature in dark ink that reads "James N. Witkowiak". The signature is written in a cursive style and is enclosed within a large, hand-drawn oval.

James N. Witkowiak, Chair  
Licenses Committee

cc: All Council Members  
City Attorney's Office  
Common Council/City Clerk – License Division  
CCF 050811

LAW OFFICES OF  
**MICHAEL A. I. WHITCOMB**

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Milwaukee, Wisconsin 53203-1918

Telephone 414-277-8384  
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December 9, 2005

**HAND DELIVERED**

The Honorable Common Council  
of the City of Milwaukee  
Room 205, City Hall  
200 E. Wells Street  
Milwaukee, WI 53202

CITY OF MILWAUKEE  
2005 DEC -9 PM 1:07  
RONALD O. LEONHARDT  
CITY CLERK

Re: Renewal of Class "B" Tavern and Tavern Amusement (Cabaret) Licenses  
Agent: Andrea N. Chavis  
Corporate Entity: Diamond Food & Beverages, Inc.  
Premises: 6222 West Fond du Lac  
Trade Name: Phoenix Bar & Grill

Honorable Members of the Common Council:

Please be advised that this office represents the above-referenced license renewal applicant. This communication is submitted as the applicant's written objections to the November 23, 2005 report of the Utilities & Licenses Committee (hereinafter "Committee"), recommending on a vote of three to two that applicant's Class "B" Tavern and Tavern Amusement (Cabaret) licenses (Licenses) not be renewed. The applicant requests that these written objections be considered at the Common Council meeting of Tuesday, December 13, 2005, at which time the Committee's recommendations regarding the license renewals will be considered.

The recommendations of the Committee were based only upon the synopsis of the Milwaukee Police Department, License Investigation. Although the notice for the renewal hearing indicated that there may be neighborhood objections, no neighbors appeared before the Committee testifying in opposition to renewal of the Licenses. Paragraph 3 of the Findings of Fact in the Committee's report incorrectly states that "[t]here were also neighborhood objections."

Initially it cannot be contended reasonably that the loss of the Licenses is justified in any respect by the synopsis of the Milwaukee Police Department. In fact, the synopsis, as it relates to the last license year, reports but three incidents. These are listed as paragraphs 5(J), (K) and (L) of the Committee's report.

Paragraph 5(J) describes an armed robbery and shooting that occurred off-premise. The only tie to the licensed premise was that the victim said he had been at the licensed premise earlier.

Paragraph 5(K) notes a dismissed citation for Class D Bartender licensed required. A dismissed citation should have no bearing of the renewal of the Licenses. Paragraph 5(K) also notes a citation for failing to post occupancy capacity for which a fine of \$100 was paid. It is true that the occupancy capacity was not posted at the time because it fell off the wall and dropped behind the bar. This innocuous technical violation of law does not and never has justified nonrenewal of tavern related licenses.

Paragraph 5(L) notes a citation for sale to underage for which a fine of \$125 was paid. This citation may not be considered for renewal of the Licenses as a matter of statutory law. *See* Wis. Stat. § 125.12(1)(b). Nevertheless, the citation was the result of a three-person plain-clothed police “sting” operation. One of the officers ordered three drinks. As one of the officers was recognized as a member of the police force, presumed off-duty, the three drinks were served under the misapprehension that an off-duty officer certainly would bring a minor into a licensed establishment. Thus the “sting” officers were not “carded.”

Paragraphs 5(A) thru (J) notes incidents that all occurred prior to 2004, and for which a 60-day suspension was imposed and served, and the only incident in 2004, paragraph 5(I), related to exceeding capacity for which a fine of \$300 was paid.

Due to a contemporaneous serious family medical situation, the applicant appeared before the Committee without counsel, and was not fully prepared as having only seen the notice for the hearing the day earlier. To further elaborate, this licensed premise has been licensed since 1997. The licensed premise is comprised of an eatery and tavern connected to a minority owner hotel. Prior to its current owner, the hotel was decrepit flea-bag rented to patrons more on a weekly and monthly basis than daily.

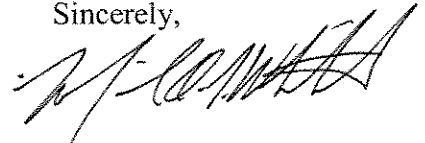
The present owner substantially improved the hotel, eliminated the long-term tenants, and transformed the hotel into a respectable facility frequented by visitors and travelers. The licensed premise provides the comfort and convenience to the hotel patrons.

The Cabaret license does not add substantially to the hotel facility, and has at times been a distraction. Therefore, after considered deliberation, the applicant is agreeable to the concept of withdrawing its renewal request of the Cabaret license, and in lieu thereof, requests that a Tavern Dance license be granted to permit playing recorded conventional music and dancing. Music played by live musicians presumptively attractive to a more youthful patronage under the Cabaret license would be no more.

It would be totally inequitable to accept the recommendation of the Committee. It is respectfully submitted that allowing the premise to continue to sell alcohol under a Class B Tavern License and to replace the Cabaret License with a Tavern Dance License would be fair and equitable under the circumstances.

Therefore, it is respectfully requested that notwithstanding the recommendation of the Committee, your Honorable Body vote to renew the Class B Tavern License and replace the Cabaret License with a Tavern Dance License.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Whitcomb", written over a horizontal line.

Michael A.I. Whitcomb

c: Diamond Food & Beverages, Inc.