

Jeff Pawlinski
Alderman, 13th District



CHAIR:
Utilities & Licenses Committee

COMMITTEES:
Zoning, Neighborhoods and Development
Steering & Rules
Anti Graffiti Policy
Administrative Review Appeals Board
Resolutions Committee - League
of Wisconsin Municipalities

November 4, 2002

To the Honorable, the Common Council

Dear members:

Re: Common Council File 020123

Attached are written objections to the nonrenewal recommendation of a Class "B" Tavern and Tavern Amusement (Cabaret/Nite Club) application of Joanne L. Flanagan and determination of an unfit location based upon police report and neighborhood objection for the premises at 7924 W. Appleton Ave. ("Maze Nite Club") in the 5th Aldermanic District.

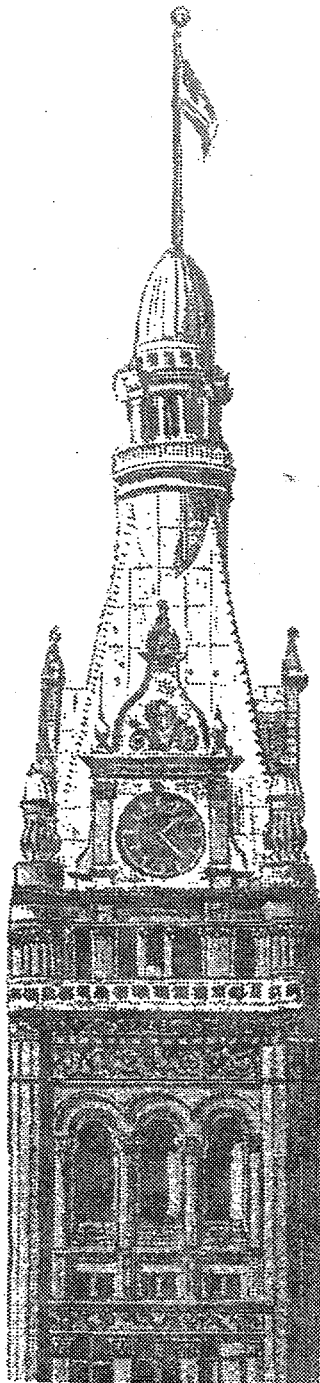
This matter will be heard by the full Council at its November 6, 2002 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached objections.

Respectfully,

A handwritten signature in dark ink, appearing to read "Jeff A. Pawlinski".

JEFFREY A. PAWLINSKI, Chair
Utilities and Licenses Committee

cc: City Attorney's Office
Common Council/City Clerk – License Division
Milwaukee Police Department – License Investigation
All Council Members
CCFN 020123



GIMBEL, REILLY, GUERIN & BROWN

LAW OFFICES

FRANKLYN M. GIMBEL
COURT COMMISSIONER

RICHARD E. REILLY

D. MICHAEL GUERIN

THOMAS E. BROWN

DENIS J. REGAN
COURT COMMISSIONER

KATHRYN A. KEPPEL

PATRICK J. KNIGHT

RAYMOND M. DALL'OSTO
ALSO LICENSED IN ILLINOIS

AARON M. HURVITZ

JENNIFER A. LINO

CHRISTOPHER L. STROHBEHN

BYRON B. CONWAY

PARALEGALS

STEVEN M. LANT

SUE M. SOCZKA

ANGELA D. JANSSEN

VALDEMAR GONZALEZ, JR.

CORINA J. HERR

JEFFREY A. KAUFMAN
OF COUNSEL

C.R. REILLY (1901-1983)

FAX TRANSMITTAL COVER SHEET

DATE: November 4, 2002

TO: Milwaukee Common Council
Utility and Licensing Committee

FACSIMILE NO: 286-3456

FROM: Christopher Strohbehn

OPERATOR: Gloria

RE: Maze Nite Club

CLIENT NO.: 2002 436 09

DOCUMENT NAME: Objections to findings of fact, conclusions of law
and recommendation

COMMENTS:

ORIGINAL TO BE MAILED: ☒ YES ☐ NO

TOTAL PAGES SENT 6
(Including this page):

CONFIDENTIALITY NOTICE:

This transaction contains confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, distribution, copying or action based on the contents of this confidential information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone to arrange for its return. Thank you.

TWO PLAZA EAST, SUITE 1170 • 330 EAST KILBOURN AVENUE • MILWAUKEE, WISCONSIN 53202

TELEPHONE: (414) 271-1440 • FACSIMILE: (414) 271-7680

www.grgblaw.com

GIMBEL, REILLY, GUERIN & BROWN

LAW OFFICES

November 4, 2002

FRANKLYN M. GIMBEL
COURT COMMISSIONER

RICHARD E. REILLY

D. MICHAEL GUERIN

THOMAS E. BROWN

DENIS J. REGAN
COURT COMMISSIONER

KATHRYN A. KEPPEL

PATRICK J. KNIGHT

RAYMOND M. DALL'OSTO
ALSO LICENSED IN ILLINOIS

AARON M. HURVITZ

JENNIFER A. LINO

CHRISTOPHER L. STROHBEHN

BYRON B. CONWAY

PARALEGALS

STEVEN M. LANT

SUE M. SOCZKA

ANGELA D. JANSSEN

VALDEMAR GONZALEZ, JR.

CORINA J. HERR

JEFFREY A. KAUFMAN
OF COUNSEL

C.R. REILLY (1901-1983)

Milwaukee Common Council
City Hall, Room 205
200 East Wells Street
Milwaukee, Wisconsin 53202
VIA FACSIMILE 286-3456

Members of the Common Council:

This letter constitutes Joanne Flanagan's objections to the findings of fact, conclusions of law, and the recommendation contained in the Utilities and Licenses Committee's report of October 28, 2002. Additionally, in accordance with section 90-11-7-d-2, *Milwaukee City Ordinances*, Ms. Flanagan requests oral argument before the Common Council on November 6, 2002 at 9 a.m.

FINDINGS OF FACT

The Police Dispatch Listing

As a whole, Ms. Flanagan objects to the admission of the entire police "report" as a finding of fact on the record. This police "report" is more akin to a dispatch listing of anonymous calls. Upon arrival, most of these anonymous calls remained factually unsubstantiated in the record as to the specific complaints registered. As a result, the police notation of activity is largely overstated in relation to amount of citations given and arrests made. Ms. Flanagan specifically objects as follows:

A. No general objection as to finding no. 5A; however, the record should reflect that it was Maze Nite Club staff who contacted the police to assist in the situation.

B. Ms. Flanagan objects as to the foundation of finding 5B.

C. Ms. Flanagan objects as to the foundation of finding 5C. This finding notes the tenor of the caller's noise complaint; however, the record should reflect that nothing factual exists to substantiate this claim.

TWO PLAZA EAST, SUITE 1170 • 330 EAST KILBOURN AVENUE • MILWAUKEE, WISCONSIN 53202

TELEPHONE: (414) 271-1440 • FACSIMILE: (414) 271-7680

www.grgblaw.com

**GIMBEL, REILLY,
GUERIN & BROWN**
LAW OFFICES

November 4, 2002

Page 2

D. No general objection as to finding no. 5D, only as to the speculation that it was "obvious that these parking violations were caused by patrons of the Maze Nite Club."

E. Ms. Flanagan objects as to the foundation of finding no. 5E.

F. Ms. Flanagan objects as to the foundation of finding no. 5F. This finding notes there were complaints of noise; however, the record should reflect that there was no substantiation of noise outside of the club. In fact, the police officer at the scene did not report noise, and instead reported a "medium amount of traffic."

G. No general objection as to finding no. 5G; however, the record should reflect this was the night of a special event with a celebrity and that the report of the fight was not substantiated.

H. Ms. Flanagan objects as to the foundation of finding no. 5H, and the characterization that the bar manager harassed the officers and interfered with the officers' attempts to apprehend the disorderly persons.

K. Ms. Flanagan objects as to the foundation of finding no. 5K. The record should reflect that no factual substantiation of any of these complaints exists.

The Neighborhood Objections

As a whole, Ms. Flanagan objects to the "factual" findings listed in N-W. These alleged "facts" are so exaggerated, speculative and repetitive, that they suggest pure orchestration, and also lack foundation and substantiation. Ms. Flanagan specifically objects as follows:

N. Ms. Flanagan objects as to the foundation of finding 5N.

O. Ms. Flanagan objects as to the foundation of finding 5O.

P. Ms. Flanagan objects as to the foundation of finding 5P.

Q. Ms. Flanagan objects as to the foundation of finding 5Q.

R. Ms. Flanagan objects as to the foundation of finding 5R.

S. Ms. Flanagan objects as to the foundation of finding 5S.

November 4, 2002

Page 3

T. Ms. Flanagan objects as to the foundation of finding 5T, and specifically as to "the neighbors" and "numerous acts of public urination."

U. Ms. Flanagan objects as to the foundation of 5U, and that the observation of "joints" is pure speculation.

V. Ms. Flanagan objects as to the foundation of finding 5V.

W. Ms. Flanagan objects as to the foundation of finding 5W.

X. Ms. Flanagan objects as to the foundation of 5X.

CONCLUSIONS OF LAW

Ms. Flanagan hereby objects to the Utilities and Licensing Committee's conclusions of law as follows:

Heath, Welfare and Safety and the Licensing Renewal

Ms. Flanagan objects to conclusion of law no. 2 stating that the Maze Nite Club has not met the criteria of Chapter 90 needed in order to allow the renewal of her Class "B" Tavern license. Furthermore, Ms. Flanagan objects to conclusion of law no. 4 stating that the Maze Nite Club threatens the health, safety, and welfare of the citizens of the City of Milwaukee. None of the so-called "evidence" presented at the Utilities and Licensing hearing substantiate any real and pernicious threats to the health, safety, and welfare of the neighbors.

The Utilities and Licensing Committee has taken an extraordinary step by recommending a nonrenewal of Ms. Flanagan's Class "B" license, one that deviates from the standard taken by the committee. Normally, a tavern owner is penalized by incremental suspensions of the license. Specifically, chapter 90-11-7-c-2, *Milwaukee City Ordinances*, expressly allows for the "committee to recommend that the license be renewed conditioned upon a suspension of the license for a defined period of time." As a matter of policy, this method is designed to keep people who have invested an extraordinary amount of capital into their business (and the community as well) an opportunity change the way their business is run so as not to lose their investment and livelihood. Ms. Flanagan has invested over \$500,000 into her business at the Maze Nite Club. Ms. Flanagan's investment and livelihood should not be allowed to go to waste in this fashion by taking away her Class "B" license entirely.

In this type of situation as an alternative to nonrenewal, a license can be renewed with a period of suspension "for not less than 10 days and no longer than 90 days." § 90-11-7-c-2. Here, by recommending nonrenewal without

November 4, 2002

Page 4

adequate consideration of alternative suspensions, the Utilities and Licensing Committee gave Ms. Flanagan and her substantial interest in her property disparate treatment and punishment.

Unfit Location for a Class "B" Premises

Ms. Flanagan objects to conclusion of law no. 3 which states that her location is an unfit location for a Class "B" premises, as there is no substantiated factual basis to support this finding. This finding is clearly erroneous and contrary not only to the law, but the factual evidence presented at the hearing. At the hearing, no evidence was presented supporting the premise that the said location was an "unfit" location for a Class "B" license. The only evidence presented was in respect to the issue of Ms. Flanagan's license renewal, and no distinction was made from this issue. Thus, Alderman Herron's proposed "friendly amendment" to the motion was in error, and contrary to law and fact.

Alderman Herron based this "friendly amendment" on the testimony of three neighbors (who were not specified for the record) that this was an unfit location for a bar or tavern due to the proximity of their residences and the parking issues. Furthermore, this neighbor testimony lacks the distinctive factual basis required to sustain a finding that this location is "unfit." The neighbor's statements constitute sheer speculation and are based on nothing more than emotion and conjecture. These statements clearly lack the veracity required in order to support such a drastic measure as declaring the location "unfit." In fact, prior to Ms. Flanagan, this location was operated as a tavern for a number of years by Truman Strong without incident.

Again, Ms. Flanagan's investment into the business has been substantial. Declaring her property as an "unfit" location for a Class "B" premises not only will prevent her from continuing her business in the short term, but also in the long term, it will prevent her from selling the building to another owner with a Class "B" license, with a different idea or different plan for the property. This result puts Ms. Flanagan into dangerous financial straits. Alderman Herron's "friendly amendment" was made without the sufficient factual basis on the record, and like the recommendation of nonrenewal from the committee, it should not be followed. Ms. Flanagan's location should not be deemed an unfit location for a bar or tavern.

The Alternative

The Common Council should give Ms. Flanagan an opportunity to keep her Class "B" license, with strict conditions and some punishment, which is proportionate to the factual circumstances. Furthermore, the Common Council

GIMBEL, REILLY,
GUERIN & BROWN
LAW OFFICES

November 4, 2002

Page 5

should not declare Ms. Flanagan's premises an "unfit" location. Ms. Flanagan's license should be renewed, with a definite period of suspension of 10 days. In this period of suspension, Ms. Flanagan would have the opportunity to completely revise, remodel, and restructure her format entirely from a Tavern/Nite Club into more of a bar and grill style restaurant. This restaurant would be under new management with an emphasis on food and other retail items, rather than alcohol sales. Furthermore, Ms. Flanagan would agree to close the restaurant's bar at 11 p.m. on the weekends, and 10 p.m. during the weekdays, thus reducing "closing time" traffic. These measures would achieve the goals of:

- (1) Satisfying and securing the neighbors; and
- (2) Sustaining Ms. Flanagan's business; and
- (3) Targeting alternate clientele.

Upon completion of the 10-day suspension Ms. Flanagan's format would be completely changed. These new measures and parameters would be set into place. A different style of business would exist to target a different type of clientele. In accordance with this change of management and reduction in customers, security would be reduced drastically. Considering the normal course of action taken by the Common Council with respect to license renewals this is the most appropriate, least drastic measure to take under the circumstances, one that would not result in the death knell to Ms. Flanagan's livelihood.

Very truly yours,


CHRISTOPHER L. STROHBEHN

Civl/Flanagan/objection2