



JAMES A. BOHL JR.
Alderman, 5th District

February 27, 2009

To the Honorable, the Common Council

Dear Members:

Re: Common Council File 081063

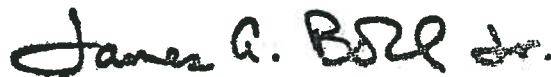
Attached are written objections to:

Renewal with a 60-day suspension, based on a police report and neighborhood testimony, of the Class "B" Tavern and Record Spin licenses of Pablo De La Cruz and Oliva A. Arias for the premises at 2237 W. Forest Home Ave. ("La Espanola") in the 8th aldermanic district. (Committee vote: Ayes: 3, Noes: 2, Excused: 0)

Denial, based on a police report and neighborhood objections, of the Class "B" Tavern and Tavern Dance renewal applications of Shamika M. Evans for the premises at 3762 N. Martin L. King, Jr. Dr. ("Marjani") in the 6th aldermanic district. (Committee vote: Ayes: 5, Noes: 0, Excused: 0)

These matters will be heard by the full Council at its March 3, 2009 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,



James A. Bohl, Jr., Chair
Licenses Committee

cc: All Council Members
City Attorney's Office
Common Council/City Clerk – License Division
CCF 081063

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ANDREW P. ARENA

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February 26, 2009

Milwaukee Common Council
City Hall, Room 105
200 East Wells Street
Milwaukee, WI 53202-3570

Re: Objection to the Findings of Fact and Conclusions of Law
For Oliva A. Arias and Pablo De La Cruz, Class B Tavern
And Record Spin License for 2237 W. Forest Home, "La Espanola"

In regards to the Findings of Fact and Conclusions of Law the Oliva Arias and Pablo De La Cruz, hereinafter referred to as the Licensees the following objections are stated.

As to paragraph 3 of the Findings of Fact there was no testimony and no finding that there was any neighborhood objections to the license being renewed. There was no evidence of loitering, littering, loud music and noise, parking and traffic problems, drug and criminal activity, prostitution, trespassing, public urination, fights, shootings, or any other evidence that the operation constituted a nuisance. This list of items is boiler plate and the Licensees strenuously object to it being included in the findings of fact.

As to paragraph 4 of the findings of fact the previous procedural history should have no bearing on any decision as this matter was sent back to the Committee by the Court to be considered "de novo" which means as though the previous hearing did not occur.

As to paragraph 6 of the findings of fact the Licensees object to the Police Report as hearsay. This Police Report is a summary of the investigation reports which were not provided to the Committee and should not be relied on in any way.

In response to the Police Report, the Licensees supplied eye witness testimony under oath to the events of June 1, 2008. Those witnesses established that unknown people started a problem with a verbal argument. That the people were asked to leave and moved out of the door separately from the patrons, that they started the problem with. Alexis Sanchez-Luando came to the argument from a different location with a pistol, as the ejected patrons tried to regain entry by throwing bottles at the windows and doors. That the Police were called by several people immediately, and one of those to call was Licensee Oliva Arias. That the individual that obtained the pistol was threatened by a person outside throwing bottles, and that person started throwing the bottles at the person with the gun. That the victim was warned to stop throwing the bottles, and that he had a gun and would use it. The victim kept throwing the bottles and a warning shot into the ground was fired. The victim continued on in a threatening way and eventually was struck by bullets. It was never established by testimony that any employee of the premises was involved or aided the shooter. The District Attorney refused to charge any other party than the actual shooter who was the unknown individual.

The Licensee and the brother of the Licensee Ignacio Arias immediately complied with the Police investigation when the Police arrived. Ignacio Arias stated he told the Police his eyewitness account and that he was burned by an ejected shell from the gun. The Licensee Pablo De La Cruz told the Police that he was inside and did not see the fight outside which was true. He informed the Committee that he stayed inside to keep the patrons inside and keep the people out that were removed from the bar. The Licensees only speak Spanish and believe that they were asking the questions as forthright as possible. The Licensees deny that they failed to cooperate and they in fact helped identify a witness that was employed as a door man. Eventually, the District Attorney's Office charged someone with the shooting that allegedly forced the door employee to drive him from the scene. The door man who was known as BEBE eventually was going to be a witness. The case against the Defendant was dismissed because the victim failed to appear in Court to testify.

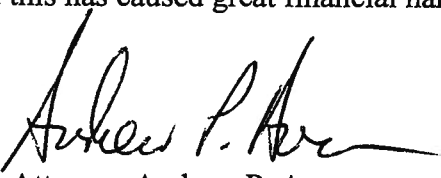
The person that shot the man on the street has moved to Connecticut which is where he is from. He was not a regular customer of the establishment and he was unknown to the Licensees. This incident is the only incident at the location in its two year history. The Licensee took steps to prevent such an event from happening again.

The Licensee has contracted with Wisconsin Security Solutions that provide uniformed, badged security that is armed. The Officers of this company testified that they are trained to weapons and drug searches and that they check the identification of all patrons. The Licensees also installed a state of the art digital video system inside and out, and have placed signs that let all patrons know that their actions are being video recorded. The Licensees have also placed many signs that state rules of conduct. It was also testified that no more than two patrons are allowed in the restrooms and that this rule is strictly enforced.

The Licensees have demonstrated that the single event in the Police report is an unusual isolated event. There wasn't a single police call, arrest or problem in the year of operation prior to the incident. In the six months following the incident there have been no police calls or complaints made by any neighbor or patron of the establishment. The uniformed security and video equipment have proven to be effective, and they prove that the Licensees are good and responsible operators.

The Licensees are husband and wife. They own a home in the City of Milwaukee and pay all of their taxes. They are helping two children go to College and have worked very hard to build a viable business. The discipline should be progressive and 60 days is extremely harsh for one incident. They have been closed for one month already and this has caused great financial hardship, but they would like to continue on with their business.

Respectfully submitted,



By: Attorney Andrew P. Arena

CITY OF MILWAUKEE COMMON COUNCIL

In re the Class B License of Pablo De La Cruz
and Oliva A. Arias d/b/a "La Espanola"

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 8th District, Alderman Robert G. Donovan, from participating in the hearing concerning La Espanola. Pursuant to due process of Law Alderman Donovan 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:

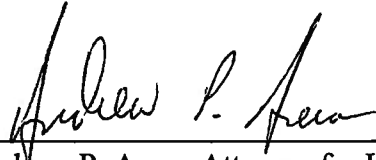
1. At the previous hearing on December 2, 2008 Alderman Donovan clearly and passionately advocated for the license to be non-renewed and this position was expressed as a witness and prior to all evidence being received by the Committee.
2. At the second hearing on February 18, 2009 Alderman Donovan presented witnesses and made statements that demonstrated a clear bias and prejudgment that the license should not be renewed. Upon the testimony of Alderman Donovan he refused to be cross examined on his assertions and left the room which caused the Chairman of the Committee to strike his testimony and ask the members of the Committee to disregard his statements as hearsay and the statements were further stricken due to the lack of cooperation in the quasi-judicial process by refusing to be cross-examined.
3. 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.

4. 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 contrary to their property interests in the License. On Page 18 of the December 2, 2008 transcript Alderman Donovan made a clear request for a non-renewal of the License and he continued this position.

5. To allow Alderman Donovan 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 Donovan should not be allowed to end around the Committee's decision, nor should he be allowed to advocate his desires and bias at this point of the proceeding. He was heard in the fact finding hearing and his behavior caused his testimony to be stricken. He should not have another chance at the expense of the due process rights of the Licensee. His district was adequately represented by him at both hearings and no testimony came in by any citizen with direct knowledge of the operation. Alderman Donovan, furthermore, should not be allowed to have any vote on this matter as it would be contrary to the holding in the above cited Supreme Court Case.

Respectfully Submitted this 26th day of February, 2009

A handwritten signature in black ink, appearing to read "Andrew P. Arena". The signature is written in a cursive style with a large initial 'A'.

Andrew P. Arena Attorney for La Espanola



Attorneys at Law

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February 26, 2009

Via Email Only (rleonh@milwaukee.gov)

Office of the City Clerk
City Clerk Ronald D. Leonhardt
City Hall
200 East Wells Street, Room 205
Milwaukee, WI 53202

Re: Marjani – 3762 N. Martin Luther King, Jr. Drive, Milwaukee, Wisconsin
-Objection

Dear City Clerk Leonhardt,

Our office is Counsel to Marjani, 3762 N. Martin Luther King, Jr. Drive. On February 18, 2009, the Licenses Committee met to consider the renewal of the Class B Tavern and Tavern Dance licenses for Marjani and its agent, Shamika Evans. The Committee voted to recommend that Marjani's license not be renewed based upon items contained in the police report and neighborhood objection.

This letter serves as my client's written objection to the "Findings of Fact and Conclusions of Law" and recommendation of the Licenses Committee ("Committee"). The specific objections are as follows:

1. The Committee has failed to adopt Findings of Fact and Conclusions of Law as required by § 125.12(2)(b)(3), Wis. Stats., and § 90-11-2-c2, Milwaukee Code of Ordinances.

Paragraph 5 of the "Findings of Fact" (contained on page 2), states that "Based upon the sworn testimony heard and the evidence received at the hearing, the **Committee finds the following**" [emphasis added]. Marjani objects to this statement, as the Committee has never adopted these findings. Because the Findings of Fact and Conclusions of Law were never adopted by the Committee, it would be more properly characterized as the City Attorney's proposed Findings of Fact and Conclusions of Law.

2. Due Process, as guaranteed under both the United States Constitution and Wisconsin Constitution, requires that the City of Milwaukee prove the allegations made in the police report prior to those allegations being accepted as fact by the Committee.

The Findings of Fact and Conclusions of Law incorporate the entire police report. The police report, as read to the Committee on the day of the hearing, is quadruple hearsay. The Milwaukee Police Department failed to provide evidence at the hearing regarding any of the alleged incidents in the police report and also failed to overcome the hearsay issues contained in the police report as presented to the Committee.

3. Paragraph 3 of the Findings of Fact states, in part, the following:

There were also claimed neighborhood objections to loitering, littering, loud music and noise, parking and traffic problems, drug and criminal activity, prostitution, trespassing, public urination, fights, shootings, vandalism, thefts, operation of the premises in such a manner that it creates a public nuisance, disturbing the peace, causing the normal flow of traffic on roadways to be impeded, and conduct which is detrimental to the health, safety and welfare of the neighborhood.

Marjani objects to this statement as there is nothing contained in the applicant's file, the police report, or evidence presented to the Committee regarding all of the alleged neighborhood objections listed in Paragraph 3.

In summary, Marjani objects to the Findings of Fact and Conclusions of Law. In violation of § 125.12(2)(b)(3), Wis. Stats., and § 90-11-2-c2, Milwaukee Code of Ordinances, the Licenses Committee has never adopted the Findings of Fact and Conclusions of Law. In violation of Marjani's right to Due Process, the Licenses Committee accepted the police report as fact without any credible substantiation by the MPD or City of Milwaukee. In addition, the Findings of Fact contain an inaccurate summary of the alleged neighborhood objections to the license renewal.

Thank you for your attention to this matter.

Sincerely,



Michael S. Maistelman
Attorney at Law

Cc: Shamika Evans (via email)