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CITY OF MILWAUKEE

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UTILITIES & LICENSES COMMITTEE

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In the Matter of:

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SHAH, Nihar J., Class "A" Liquor and Malt renewal application for "VIP Food & Liquor Mart" at 6329

South

6

20th Street State Street.

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COMMITTEE MEMBERS

9

ALD. JAMES WITKOWIAK - Chairman

10

Ald. James Bohl, Jr. - Vice

Chairman

11

Ald. Joseph A. Dudzik

12

Ald.

Robert Puente

13

Ald.

Willie Wade

14

15

DEPARTMENT OF NEIGHBORHOOD SERVICES by PANDORA

BENDER

16

HEALTH DEPARTMENT by OSCAR L. BOND

17

LICENSE DIVISION by JIM

COPELAND

18

POLICE DEPARTMENT by SERGEANT JOHN

HOGAN

19

OFFICE OF THE CITY ATTORNEY by BRUCE

SCHRIMPF

20

Proceedings had and testimony given

in

& 21

the above-entitled matter, before the UTILITIES LICENSING COMMITTEE OF THE CITY OF MILWAUKEE,

on

22

the 13th day of July, 2004, reported by Donna Gulczynski of Milwaukee Reporters Associated,

Inc.

23

24

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1

P R O C E E D I N G S

2

(NOTE: All City Personnel Were Sworn

Under

3

Oath Prior to These Proceedings.)

4

CHAIRMAN WITKOWIAK: Also in the 13th

5

District, Nihar Shah, Class "A" Liquor and Malt

6

renewal application for VIP Food & Liquor Mart

at

7

6329 South 20th Street. Good morning.

8

MR. BANGERT: Good morning.

9

CHAIRMAN WITKOWIAK: Could you raise

your

10

right hand and be sworn in, please?

11

(Whereupon Nihar Shah was sworn under

oath.)

12

CHAIRMAN WITKOWIAK: And your name and

13

address, please?

14

MR. SHAH: My name is Nihar Shah. My

15

address is 3342 South Austin Street, Apartment

203,

16

Milwaukee, Wisconsin.

17

CHAIRMAN WITKOWIAK: Could you state

your

18

appearance, please?

19

MR. BANGERT: David Bangert. I'm

appearing

20

as attorney for Mr. Shah.

21

CHAIRMAN WITKOWIAK: Thank you. Mr.

Shah,

22

do you admit to receiving notice there's a

possibility

23

your application could be denied because of items

24

contained in the police report?

25

MR. SHAH: I received that letter.

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1 CHAIRMAN WITKOWIAK: You did. Okay.
2 Sergeant Hogan?

3 SERGEANT HOGAN: There were some sales
to
4 underage in a police sting operation since his
license
5 was last granted. The first occurred on the 27th
of
6 February of this year. A citation was issued
to both
7 the licensee and the clerk who did the sale. The
8 citation to the licensee was dismissed. The
clerk
9 paid a fine.

10 There was one on March the 18th of this
11 year. The citation issued to the licensee was
12 dismissed. The citation issued to the cashier
is
13 pending. The next court date is July the 26th.
There
14 was another one that occurred on June the 2nd.
The
15 report on that item was received by my office too
late
16 to be included in this report.

17 CHAIRMAN WITKOWIAK: Thank you. Mr.
Shah,
18 do you also admit that in the notice there was
an
19 objection saying that there might be
neighborhood
20 objections to loitering, littering, loud noise,
sale
21 to underage, which was covered, and conduct which
is
22 detrimental to the health, safety and welfare of
the
23 neighborhood?

24 MR. SHAH: Yes.

25 CHAIRMAN WITKOWIAK: All right.

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1 Neighborhood Services?

2 MS. BENDER: No objection.

3 CHAIRMAN WITKOWIAK: Health

Department?

4 MR. BOND: No objection.

5 CHAIRMAN WITKOWIAK: Okay. Could you
please

6 comment?

7 MR. BANGERT: Well, my primary
comments are

8 about the citations for sale to underage, and I
think

9 that's been the problem that has frustrated Mr.
Shah,

10 especially during the last year, this year of
11 operations. He's had problems, and I can state

--

12 I've represented him on these citations, and

I can

13 state that from my own knowledge, Mr. Shah

works

14 full-time. The store hours are from 8 a.m. until

9

15 p.m., and generally he works 80 percent of the
time.

16 He's got a diabetic condition, and he is
required to

17 leave to have some meals.

18 Since the last meeting, since the

last

19 renewal, Mr. Shah has been frustrated because

he's, I

20 know, worked very, very hard to be sure that any

new

21 employees were trained and emphasized over and

over

22 again that there has to be the proper measures

taken

23 to check IDs.

24 The violation that came up February

27th,

25 2004, was on a day that Mr. Shah was working

full-time

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1 throughout the day, except it was his
birthday. He
2 took a two-hour break at about from 4 to 6 p.m.
to
3 eat. The manager -- or not the manager, --
the
4 employee who was left at the cash register,
that's
5 when the violation occurred. Normally there's
another
6 manager, kind of an assistant to Mr. Shah,
someone --
7 her name is Jody Browy, B-r-o-w-y. She's not here
8 today because she is supervising the store in
9 Mr. Shah's absence.
10 She wrote a letter that Mr. Shah -- It
looks
11 to me like -- It's to Whom It May Concern. It
looks
12 to me like it was probably addressed to the
alderman,
13 but from my review, -- I was just provided the
letter
14 this morning. It basically says the same thing
that
15 I'm telling you, that Mr. Shah normally works --
16 CHAIRMAN WITKOWIAK: Excuse me,
Mr. Bangert.
17 We can't accept that.
18 MR. BANGERT: I'm not offering it.
Mr. Shah
19 works 80 percent of the time, and
unfortunately these
20 violations, these two in this past year, have
occurred
21 on times where he took a break, and for one
reason or
22 another there was a screw-up by an employee.
This
23 Miss Browy, who generally manages in Mr.
Shah's
24 absence, those two occurrences happened to
be, as she
25 stated to me, on days that she had a health
problem

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1 and wasn't there that day.
2 Mr. Shah has done everything he
can -- I
3 won't say everything he can regarding the
sale to
4 underage, because there's one last step that
we've
5 investigated and I've suggested to Mr. Shah,
and
6 he's taken steps now to invest in. There's
some
7 new software, -- I don't know how new it is,
but
8 it's just come to our attention, -- called Legal
Age
9 Security software which apparently has been very
10 successful in -- if the employees use it properly
and
11 are trained properly, -- in scanning IDs so that
12 there's no chance that there can even be a false
ID or
13 anything of that nature. It verifies age. That
14 software is approximately a thousand dollars.
15 Mr. Shah has indicated -- well, I know
that
16 in the last week he's made inquiries, and he's
ordered
17 it and taken the first steps to put it into
effect.
18 There has to be some training and installation
of
19 that.
20 The second offense on March 18th,
2004,
21 was a similar occurrence. It was in the absence
of
22 Mr. Shah, and he fired the first employee who
sold to
23 underage, a new employee screwed up again, and
24 basically that's what happened. He's not trying
to
25 offer any excuses. What's happened is a matter
of

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1 fact. I don't know -- THERE was mention of an
2 instance on June 2nd, 2004, and that's one I'm
not
3 aware of.

4 MR. SHAH: She left before.

5 MR. BANGERT: Okay. So I can't
comment

6 regarding that.

7 MR. SHAH: She left, my employee left,
you
8 know. David Bangert represented her, and she
went to
9 Iowa.

10 CHAIRMAN WITKOWIAK: Okay. Thank
you.

11 Questions by committee?

12 ALDERMAN WADE: Mr. Chair.

13 CHAIRMAN WITKOWIAK: Alderman Wade.

14 ALDERMAN WADE: Thank you. Sir, do you
have

15 any children?

16 MR. SHAH: No.

17 ALDERMAN WADE: You don't have any
children?

18 MR. SHAH: No.

19 ALDERMAN WADE: Okay. By looking at the
20 information that I have in front of me, although
the
21 efforts that you put in force right now may be
noble,

22 I think in my estimation you're a day late and
a

23 dollar short. It seems to be that your number
one

24 concern or problem has been sale to underage,
and I

25 don't -- by looking at this record what I see
is a

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1 pattern here, and -- Excuse me. Just let me
finish,
2 okay?

3 What I see is a pattern of you not
seeing
4 that as an urgency, not addressing it properly,
not
5 taking the steps to make sure that that doesn't
occur
6 again, because according to the information
that I
7 have in front of me, it has occurred on numerous
8 occasions. I just want to understand from you,
that
9 if you know this is your major concern, how did
you
10 let this particular thing occur over and over and
over
11 again without addressing it?

12 MR. SHAH: There's two issues I have.
13 Right now when I open the store, I don't give
keys
14 to anybody, and I work the prime time hours.
I've
15 decided to work all the prime time hours, which
is
16 from 3 p.m. to 9 p.m., and in the morning I take
off
17 between 10 and 2:00 to work on whatever other
issues
18 I have during office hours. And I have all the
19 responsibility that I will be there from 3 to
9, but
20 sometimes -- as a diabetic, I have to go get some
food
21 so I take a break, and at 1:00 I take two shots.
I
22 bring food at the store.

23 I work 14 hours some days when
employees
24 don't show up, and I've done every measure to
close
25 the door, and I card everyone at the door. I
don't

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1 even allow anybody without ID. I tell them to
go to
2 the gas station to buy your soda, because then
there
3 will be problems once there's too many people
in the
4 store, you know. Then there's too much to take
care
5 of by one person.

6 ALDERMAN WADE: Okay. Having said
that, let
7 me just ask you this. All of these sales to
minors,
8 how many times have you been the person that made
the
9 sale?

10 MR. SHAH: I have never made -- I made
once
11 in 2002 when I was working at Northwest Mutual.
I was
12 working as an engineer, a software engineer, and
this
13 was my side business and employees were running
my
14 stores. Right now I've given up all my profession
and
15 concentrate on the store. I now give 100 percent
to
16 the store.

17 ALDERMAN WADE: I just want to make one
more
18 comment, then I'm finished with this. If this
is your
19 business, your livelihood, and you know your
problem
20 is underage sales, and you yourself have made
that
21 mistake, --

22 MR. SHAH: One, one mistake I
made.

23 ALDERMAN WADE: Okay. Well,
I have my
24 concerns about it. Thank you.

25 ALDERMAN DUDZIK: Mr. Chair?

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1 CHAIRMAN WITKOWIAK: Alderman
Dudzik.

2 ALDERMAN DUDZIK: Couple
points real

3 quickly. I would like to have the entire police
4 report read into our file.

5 CHAIRMAN WITKOWIAK: Motion by
Alderman

6 Dudzik is to recommend that the entire police
report

7 be made part of this file. Hearing no
objection, so

8 ordered.

9 ALDERMAN DUDZIK: Sir, I do have a
couple

10 questions, though. One would be, can you tell
me

11 the approximate floor space of your store that is
12 dedicated to alcohol sales?

13 MR. SHAH: Okay. There's 3,500 square
feet.

14 50 percent is groceries, 50 percent is alcohol.

15 ALDERMAN DUDZIK: Okay. Could you give
me

16 an idea of roughly what, by percentage, the sale
of

17 alcohol represents?

18 MR. SHAH: Probably 60 percent to 70
19 percent.

20 ALDERMAN DUDZIK: Thank you.

21 ALDERMAN BOHL: Mr. Chairman.

22 CHAIRMAN WITKOWIAK: Alderman Bohl.

23 ALDERMAN BOHL: Thank you, Mr.

Chairman.

24 Mr. Chairman, this is a question for City
Attorney

25 Schrimpf.

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1 Item number eight on the police
report is
2 an item that occurred in the 2003 licensing
year. If
3 the matter was not adjudicated then until what
would
4 be the current licensing year, -- it was
adjudicated
5 on -- adjourned for trial on 8/25, which was a
guilty
6 finding, -- would that count as one -- Would that
7 count toward the most recent licensing year if
the
8 matter would not have been considered by the
previous
9 committee last year?
10 MR. SCHRIMPF: Mr. Chairman, neither
counts,
11 and the reason why is because even though these
12 weren't bartenders, the statute is very clear
that
13 it has to be the licensee. And so let me just
14 comment, Mr. Chairman, that defense counsel have
been
15 persuasive in dealing with these citations,
getting
16 the City Attorney's Office to dismiss the case
because
17 it was the bartender, because of lots of excuses;
the
18 licensee wasn't there, the licensee was out, the
19 licensee was on a break, and the bartender did
it.
20 And then the deal is the bartender will pay the
fine,
21 and the citation as to the licensee is
dismissed.

22 When it comes to an underage sale, --
this
23 isn't true for underage presence on a Class "B",
--
24 but if you are in a liquor store and it's an
underage
25 sale, it has to be the licensee, it cannot be
a

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1 bartender. And so in the case of looking at the
2 bartender, you could say -- and the date, by the
way,
3 the year that we're talking about, runs from the
date
4 of the violation, not the date of the
conviction.

5 So in dealing with the bartender the
next
6 time around, you can pick up the bartender if
there's
7 two within the year from the date of the first
8 violation, irrespective of the conviction. So
the
9 problem is, because of the way this shakes out
and
10 because this is the licensee, and none of the
11 licensees were convicted, or the licensee was
never
12 convicted, none of them count in this case as
to the
13 licensee, even though this occurred on his
premises.

14 I have had discussions with our
office on
15 that, and I had those discussions in June of
this
16 year, and I think the office now understands
that
17 under no circumstances is the bartender to be
18 convicted or pled out and the licensee not,
because
19 it's the licensee who remains in charge. It's
the
20 licensee who can hire and fire the bartenders
and the
21 clerks in a store like this. So we've had those
22 discussions, and I think this problem will
not
23 reoccur.

24 ALDERMAN BOHL: Thank you. And as
25 Mr. Schrimpff knows, I've expressed concerns
to him,

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1 I've contacted Linda Burke, and it's a been
a
2 frustration of mine as a committee member now
here
3 for two terms to have this committee's hands
tied
4 behind their back when ultimately we see
dismissals
5 or at times plea deals, and frankly I would
rather
6 have you try the case and lose the case before
7 municipal court than to essentially hand over
the
8 store. That's my frustration. And Mr.

Schrumpf,

9 this is established by the state statutes?

10 MR. SCHRIMPF: Yeah. So that the

TV

11 audience is clear, yes, this exists under

Section

12 125.12, I believe it's (1) (a) or (a) (1),

of the

13 statutes and various subcategories, and you

also have

14 to read Section 125.07 (1) (a) as well in order

to get

15 it all together.

16 ALDERMAN BOHL: If residents are

frustrated,

17 rather than complain to us, they should call

their

18 state legislature and speak with their

legislators,

19 ultimately, because they're holding the law

over our

20 head. They preempt us in terms of --

21 MR. SCHRIMPF: And in addition to

that,

22 Mr. Chairman, it was put through a number of

years ago

23 on one of the midnight amendments to the budget

bill

24 in the legislature, so that's how this --

25 ALDERMAN BOHL: Mr. Chairman, the

only other

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1 thing I will say is that having sat on this
committee
2 the last term, Mr. Shah appeared before us, and
I
3 believe that there was testimony of a woman who
came
4 forward whose daughter was not present
regarding
5 underage sales. We could not accept her
testimony in
6 lieu of her daughter not being present.
7 Mr. Shah, I will tell you I have
extreme
8 frustration, because as I expressed to you at
that
9 time, underage citations -- Let me finish,
okay? I
10 don't need you to cut me off. I expressed
frustration
11 to you at that time. You indicated at that time
that
12 it would not happen because you were at account
here
13 on one of the incidents.
14 I will just tell you if someone is
employed
15 by you, if they don't know the law, I believe you
are
16 responsible because you ought to convey every
single
17 day when you walk in there, card everyone, card
18 everyone, card everyone; you're fired if there's
an
19 instance. Card everyone, card everyone, card
20 everyone. Before you leave for the day,
card
21 everyone, card everyone, card everyone.
22 You've led by poor example
yourself. I
23 think that you have looked the other way in
this
24 particular instance. I am fed up personally
with what
25 I see in your record, and there's no other thing
I can

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1 say. I'm fed up with this record. I think you
have
2 been very lax in your service to youth in terms
of
3 serving underage sales, and this is uncalled for,
4 absolutely uncalled for.

5 CHAIRMAN WITKOWIAK: Any other
questions?

6 Alderman Witkowski? Let's hear from the
alderman.

7 ALDERMAN WITKOWSKI. Thank you,
8 Mr. Chairman. The item is cited for neighborhood
9 objections, and there are neighbors here, and I
would
10 ask that they come forward before I testify.

11 CHAIRMAN WITKOWIAK: Okay. Who in the
12 audience is here to testify on this matter? Just
one
13 person? Raise your right hand, please, and be
sworn
14 in.

15 (Whereupon Patricia Frausto was sworn
under
16 oath.)

17 CHAIRMAN WITKOWIAK: State your name
and
18 address for the record.

19 MS. FRAUSTO: Patricia Frausto, 6324
South
20 20th Street, Milwaukee.

21 CHAIRMAN WITKOWIAK: And how close do
you
22 live to this establishment?

23 MS. FRAUSTO: Across the street, and
this is
24 nothing against Mr. Singh because I have spoken
to him
25 before, but I live in the condominium complex
right

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1 across the street from his liquor store. In our
2 complex there are basically retired people and
single
3 people, and a few people with children, but the
entire
4 area is a residential area that borders right up
5 against Oak Creek to the south, and to the north,
of
6 course, Milwaukee, and my main objection is --
There
7 are several.

8 The two primary ones I have is, number
one,
9 there's no need for a liquor store right there.
There
10 are four gas stations within five minutes of that
11 liquor store. I'm sure that at least, if not all
of
12 them, at least one of them sells beer. On 27th
13 Street, that's a very busy district with

Jewel-Osco

14 and Pick 'N Save, both having liquor
departments. We
15 have a nice area over there on 20th Street and
16 College. There's no need for a liquor store.

17 Secondly, the disarray of that
building
18 is -- it looks bad in the neighborhood. The
building
19 is never kept up. The inside of the building,
20 although Mr. Singh did say 50 percent was
occupied by
21 groceries, I would say 80 percent is liquor and
the
22 rest is groceries.

23 Again, there are four gas stations
nearby,
24 there are convenience stores, so anybody can get
a
25 gallon of milk that doesn't have a car if they
want

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1 to walk, or eggs or whatever they need. And,
again,
2 Pick 'N Save and Jewel-Osco are right down the
street,
3 so -- And I know my neighbors in the condominium
4 complex do have objections to Mr. Singh. I
was
5 unaware of his charges of underage selling.
6 I did call Jeff, the previous
alderman,
7 at one time because there was a lot of glass
and an
8 old sign that was sitting out there for
months, and
9 I think Mr. Singh does not take pride in the
10 neighborhood. And I just found out today that
he
11 doesn't live in the neighborhood, and we do.
My
12 parents live three blocks away from there and
have
13 been residents for about 10 years, so -- And I've
been
14 a resident of the condominium complex about
three and
15 a long time resident of Milwaukee, and that's
all I
16 have to say.

17 CHAIRMAN WITKOWIAK: Okay. Thank
you. You

18 said it's a condominium across the street?

19 MS. FRAUSTO: Yes, sir.

20 CHAIRMAN WITKOWIAK: Okay. Any

questions by

21 committee of this witness?

22 ALDERMAN BOHL: Sure.

23 CHAIRMAN WITKOWIAK: Alderman Bohl.

24 ALDERMAN BOHL: Thank you. Ma'am, is

your

25 last name --

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1 MS. FRAUSTO: Frausto,
F-r-a-u-s-t-o.

2 ALDERMAN BOHL: Thank you. Do you
have --

3 Based on where your condominium is situated
here, do

4 you have visibility of this particular
establishment

5 here?

6 MS. FRAUSTO: I do not have direct
7 visibility. I'm more on the other side of the
8 complex, so I talked to the neighbors who have

direct

9 visibility of that area, and obviously I see it
every

10 day coming into the complex.

11 ALDERMAN BOHL: During those occasions
where

12 you have direct visibility of the complex and
such,

13 have there been any instances in which you see
what

14 you deem as young persons entering the
establishment?

15 MS. FRAUSTO: I can say on one occasion
16 there have been. I mean there are

teenage-looking

17 kids who obviously -- I have seen -- I at least
can

18 recall on one occasion a car full of -- I call
them

19 kids. I mean I'm just visually looking at them.

They

20 did look younger. But obviously they're going
to go

21 to a place where they probably deem it as less,
you

22 know, severe in checking the IDs, and I think this
23 liquor store also presents itself as such. And

it's

24 very close to the on and off ramps of 94, and that
25 also is concerning.

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1 The building itself is very
concerning. All
2 the windows are pasted up with beer signs and sale
3 signs. You can't see in there so anything could
4 happen in there without anybody really seeing it,
and
5 possibly a building inspection would be a good
idea.

6 ALDERMAN BOHL: I want to say, because
I
7 think you raise a couple of concerning points,
there
8 are tons of people who watch this committee, and
they
9 will say, well, how come we don't just take a
license
10 away if there's others in the area. Well, when
11 someone has a license, they have vested property
12 rights, and you just can't because there other
places
13 down the street to turn around and take that
license,
14 and that's not something that the City of
Milwaukee
15 decides. That is what state law tells us we have
to
16 abide by. The other thing is it is prohibited
where a
17 gas station cannot sell liquor, and that is the
law.

18 MS. FRAUSTO: They sell beer.

19 ALDERMAN BOHL: Yeah, gas stations --
Not
20 in the City of Milwaukee. The City of Milwaukee
21 prohibits it. So across the border in Oak Creek,
they
22 do it there. That's Oak Creek. The City of
Milwaukee
23 does not allow that. I just want to let you know
24 that.

25 MS. FRAUSTO: Okay.

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1 ALDERMAN PUENTE: Mr. Chair?

2 ALDERMAN WITKOWIAK: Aldermen Puente.

3 ALDERMAN PUENTE: I have to agree with

4 Patricia here in that word does get out when
different

5 establishments are not checking IDs, or if they
do

6 check the IDs, -- I saw in some of the reports
that

7 the police aides show them the driver's
license, and

8 they still were served even though they were
underage.

9 So the mere fact that somebody shows an ID doesn't
10 mean that they're actually looking at it because
they

11 were still getting served, and these kids out
there

12 underage do get the word that an establishment
is, how

13 shall I say, not as reluctant to check the ID or
even

14 ask for an ID, and they go there and buy the
alcohol

15 from them, and I have a big concern also when this
16 happens, obviously, because of the potential

dangers
17 that they not only cause for the underage, but

also
18 for the society as a whole, especially if

they're
19 driving. Thank you.

20 CHAIRMAN WITKOWIAK: Thank you,

Alderman
21 Puente.

22 ALDERMAN BOHL: Mr. Chairman?

23 CHAIRMAN WITKOWIAK: Alderman Bohl.

24 ALDERMAN BOHL: One other thing,

25 Miss Frausto, if there are other residents in
your

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1 condominium complex, if they do not come forward
here
2 and provide direct testimony of things they have
3 witnessed, you coming forward and saying there
are
4 others who have concerns is something the
committee
5 cannot consider. I just want you to convey
that to
6 them.

7 MS. FRAUSTO: I understand that.
8 ALDERMAN BOHL: I know, but I don't
want
9 residents to go back and say the Common Council
or the
10 Utilities & Licences Committee did nothing,
because
11 ultimately we have a set rule, we have to be
ruled by
12 the letter of the law, and the letter of the law
13 stipulates there are certain patterns of
behavior,
14 there's certain conduct, that we have to take
into
15 consideration. Direct testimony is one of
them, and
16 if residents have concerns and they don't
provide
17 direct testimony, we're out of luck.

18 MS. FRAUSTO: Well, I understand
that
19 pulling this liquor license for Mr. Singh, --
maybe
20 that is not exactly what I'm looking for. Maybe
we
21 could, you know, do some kind of suspension
where we
22 could get the building inspector there, just to
maybe
23 get the establishment up to par with the rest
of the
24 neighborhood. It is unsightly, and that is
direct
25 testimony.

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1 CHAIRMAN WITKOWIAK: Okay, thank
you. Is
2 there anyone else in the audience here that
wants to
3 testify in this matter? Raise your hand. No?
Okay.
4 About 6329 South 20th Street, anybody else in the
5 audience here?
6 And just a comment. You know, there's
some
7 pretty strict regulations on signage, and I think
what
8 you're probably referring to is these banners and
9 paste-up signs, they're just -- they're all over
the
10 place, and they kind of make the building look
like a
11 patchwork quilt instead of something nice that
fits in
12 the neighborhood, and I would urge -- especially
since
13 this came up, I would urge the department to
please
14 inspect that and take whatever necessary action
there
15 is.
16 I see that all over the city, and I
know
17 that the department is starting to get more
strict
18 enforcement of that, and I'm glad to see that,
but I
19 know the liquor companies and the soda
companies and
20 cigarette companies will say put this banner
up, put
21 that banner up, and before you know it, the
store
22 looks terrible. It's visual pollution.
Alderman
23 Witkowski?
24 ALDERMAN WITKOWSKI: Thank you,
25 Mr. Chairman. For the committee's
knowledge, there's

00023

1 a little spot of Milwaukee south of College
Avenue
2 between 13th and 20th that's still in the
City of
3 Milwaukee for four blocks, and that's where
this is.
4 It's surrounded by Oak Creek. It's seven
blocks from
5 Greenfield and seven blocks from Franklin, so
6 testimony given about other gas stations may
apply in
7 those situations.
8 The shopping center that this is
located in
9 is on the west side of the street. It is the
only
10 thing in the City of Milwaukee on the west side
of the
11 street. If you walked out the back door, you'd
be in
12 Oak Creek.
13 I have had complaints from
residents, but
14 not residents necessarily adjacent to. I've
had
15 complaints -- As Alderman Puente says, the word
gets
16 out. I've had complaints of this place selling
to
17 underage for as many as two miles away. And
since the
18 day I walked into office the end of last July,
it's
19 still not uncommon. I would say the last time
I
20 picked up a comment was about three weeks ago,
and
21 that was about a mile and a half away, telling
me that
22 this place serves to underage. And both
District 2
23 and 6 have conducted stings at different times.
24 I heard what the city attorney said.
We're
25 also coming off a 45-day suspension here. That
would

00024

1 normally be enough to teach anybody that they
can't be
2 selling to underage, and in my wildest dreams
-- I'd
3 recommend that the license be revoked because
of the
4 continuing pattern, but I also understand that
you
5 don't have the legal proof at this point to do
that.

6 So I would ask that whatever tools are at the
7 committee's disposal with their record that
they use
8 them.

9 CHAIRMAN WITKOWIAK: There was, in
fact, a
10 45-day suspension last year on this license?

11 MR. BANGERT: A year ago, that's
correct.

12 CHAIRMAN WITKOWIAK: Mr. Banger, do
you have
13 any closing arguments or statements?

14 MR. BANGERT: Well, I would just like
-- I

15 provided Alderman Witkowski with what Mr. Shah
has, a

16 petition that's been signed by -- I don't know
if it's

17 40 to 50 people. Apparently that's just been
18 circulated in the store within the last --

well, since
19 he got the notice on Friday, so apparently over
the

20 weekend. He has a couple of extra copies, so
--

21 CHAIRMAN WITKOWIAK: That's nice,
but that's

22 not actually relevant unless these people are
here to

23 testify.

24 MR. BANGERT: They're not. To my
knowledge

25 there's no one here.

00025

1 CHAIRMAN WITKOWIAK: I appreciate he
made
2 that effort.

3 MR. BANGERT: The only other comment
is --

4 I mean I think the comments and the questions
of

5 the committee members are all good, and

I think

6 Mr. Shah -- From my experience in dealing

with

7 Mr. Shah through these past couple of years,

I feel

8 that Mr. Shah takes those comments and does

try to

9 improve and is making legitimate efforts. I

mean

10 there's no question that there's plenty to

improve

11 upon, but an example is the comments regarding

12 improving possibly the visible -- making the

store

13 look more attractive in the neighborhood. I'm

sure

14 that in discussing this with Mr. Shah, that he

needs

15 that kind of constructive criticism as well as

advice

16 regarding taking some positive steps, and I'm

sure

17 he'll act on it.

18 You know, all I can tell the committee

is

19 that I know that Mr. Shah is trying to improve

and

20 will continue to try to improve the situation.

21 CHAIRMAN WITKOWIAK: Okay. Thank you.

This

22 matter's in committee.

23 ALDERMAN DUDZIK: Mr. Chairman?

24 CHAIRMAN WITKOWIAK: Alderman Dudzik.

25 ALDERMAN DUDZIK: First of all, I'd

like

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1 to say that I find your comments insulting. His
2 record is actually spiraling downward.

Unfortunately

3 it's not at his hand directly. I will be on this
4 committee, on the Council, for the next four
years,

5 and I believe the rest of us will, too, and if
there's

6 any way that we can at some point in the future
hold

7 your client culpable, I'm going to work to do that
8 because I think that this record, this record is
9 deplorable. Thank you.

10 CHAIRMAN WITKOWIAK: This matter's in
11 committee.

12 ALDERMAN DUDZIK: Having been given
sound

13 legal advice from our ever present and able

bodied

14 city attorney, assistant city attorney, I'm
15 unfortunately in a position of having to approve

this

16 license at this point in time.

17 ALDERMAN WADE: Mr. Chair?

18 CHAIRMAN WITKOWIAK: Alderman Wade.

19 ALDERMAN WADE: Is it possible for the
20 attorney to just expound on why we're in this

position

21 just so people understand it, please?

22 MR. SCHRIMPF: Okay. Because, Mr.

Chairman,

23 the state law a number of years ago was amended
24 regarding licensees, and specifically underage

sales,

25 and the state law was changed. There was a time
when

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1 any underage sale, even one in a licensing year,
even
2 if it involved a bartender, could be made the
subject
3 of a nonrenewal or a suspension of a license.
Various
4 individuals approached the state legislature and
got
5 the law changed, and here's how the law was
changed.

6 First of all, the portion of the
statutes
7 that gives to governing bodies of
municipalities the
8 power to nonrenew, suspend or refuse to issue
a
9 license, was amended, and it was amended so
that
10 before underage sales could be used as a
reason for
11 a nonrenewal, suspension or denial, or
revocation,
12 there had to be two underage sales, they had
to be
13 convictions, they had to be the licensee, and
the two
14 had to be within a year of the date of the
violation
15 of the first irrespective of when the conviction
16 occurred. So it became very complicated to
figure
17 out. You had eight variables that you had to
keep in
18 your head in order to figure it out.

19 This has been used in, so many words,
by
20 the defense bar when these cases come up, to
insulate
21 the licensee and to make sure that it is -- if
the
22 licensee did not actually dispense the alcohol,
to
23 make sure that the bartender who was involved in
the
24 transaction, or the manager who may have been
involved

in the transaction, pleads guilty to the ticket.

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1 Thereby the licensee does not get the conviction,
2 because it has to be a conviction of the licensee,
not
3 a conviction of the bartender.
4 Prior to the change in the statute,
there
5 was -- there is, and still exists, a Wisconsin
Supreme
6 Court case that says the licensee is responsible
7 vicariously for any violations committed by the
8 bartender, but by the legislature changing the
statute
9 as they did when they did, -- I think about four
or
10 five years ago, -- they effectively
legislatively
11 reversed that portion of the Wisconsin Supreme
Court
12 case, and it was done, I might add, it was done
at a
13 time that the legislature also increased the
amount of
14 punishment that was available if there's a state
law
15 conviction, both as to the licensee and as to the
16 person who obtained the alcohol who was under
age, so
17 from a pross point of view, the liquor industry
could
18 go back to the public and say we have increased
the
19 penalties for underage sales. They did.
20 They also made it very difficult,
21 increasingly difficult, to deal with the
operators of
22 places that do it. So what I'm saying is that
when
23 the bartender who was involved in this
transaction at
24 this location comes up, you can use the two,
if there
25 were two, as to that one bartender in dealing
with

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1 that bartender's Class "B" license, but you
cannot now
2 use it -- unless there's two within a year and
it
3 involves the licensee personally, you can't
use it as
4 to the licensee.

5 ALDERMAN WADE: Can I just comment
on that,
6 please?

7 CHAIRMAN WITKOWIAK: Alderman
Wade, go ahead.

8 ALDERMAN WADE: Thank you. I just
wanted to
9 make sure that that was explained because I
know my
10 constituents are looking in and saying that
we're not
11 doing anything, but we're really not in a
legal
12 position to do any more than what we're doing
right
13 now because we only have the one in a license
year, so
14 I just wanted to make sure -- I know that I
was kind
15 of worried, and I just wanted to make sure that
they
16 understood that. Thank you.

17 ALDERMAN PUENTE: Mr. Chair.

18 CHAIRMAN WITKOWIAK: Alderman
Puente.

19 ALDERMAN PUENTE: This question
would be for
20 Mr. Schrimpf.

21 MR. SCHRIMPF: Pardon?

22 ALDERMAN PUENTE: I have a question
for
23 you.

24 MR. SCHRIMPF: Sure.

25 ALDERMAN PUENTE: For the TV
audience and

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1 maybe some of the people in here, and
especially me,
2 you keep referring to bartenders, and so does
that
3 pertain to the situation we have here where
there is
4 no bartender? I know it's a licensee at a
convenience
5 store dispensing alcohol. So again for
clarification,
6 does that fall under the same umbrella or
definition
7 as you keep referring to the statement of
bartender?

8 MR. SCHRIMPF: Yes, it would,
because the
9 sellers of the alcohol, -- When the licensee
is not on
10 premise, even in a liquor store, the person
behind the
11 counter has to have a Class "D" operator's
license or
12 bartender's license in order to dispense the
alcohol,
13 so if that person has two within a year of the
date of
14 the violation of the first, you can suspend,
revoke or
15 nonrenew that bartender's Class "B" but not
the
16 licensee's.

17 CHAIRMAN WITKOWIAK: Thank you.

And before
18 we continue, however, let me remind the
committee that
19 this was also noticed for neighborhood
objections, and
20 we do have a neighbor here objecting with
testimony.

21 So as I recall, this matter was in
22 committee, and Alderman Dudzik moved to
recommend
23 approval of this license despite matters
contained on
24 the police report; is that correct? On the
motion?

ALDERMAN WADE: I object.

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1 ALDERMAN PUENTE: I'll object.

2 CHAIRMAN WITKOWIAK: And I will
object,

3 also. So the motion fails on a vote of three
to one.

4 ALDERMAN BOHL: Is the floor open,
5 Mr. Chairman?

6 CHAIRMAN WITKOWIAK: Yes, it is.

Let me

7 just brief Alderman Bohl here. There was a
motion --

8 because of this, they don't have two in a year
law, we

9 have a problem using the police report, but
I also

10 reminded the committee that this is noted for
11 neighborhood objections, and we do have a

neighbor
12 here testifying, so the first motion was to

approve,

13 and it failed.

14 ALDERMAN BOHL: Mr. Chairman, has
the entire

15 police report been made a part of our record?

16 Otherwise I would so move at this point.

17 CHAIRMAN WITKOWIAK: It has been

earlier in

18 this hearing.

19 ALDERMAN BOHL: Mr. Chairman, at
this point

20 I would move for renewal with a 10-day
suspension.

21 Unfortunately I don't think there's a whole
lot more

22 to go on, and I would cite neighborhood
testimony for

23 that matter.

24 I just -- I think that some message
has to

25 be sent to Mr. Shah. Frankly I wish there was
more to

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1 go on, because I believe there's more to it
than we
2 see before us, and I think that we would be
in hot
3 water much further than that, but I think a
continued
4 message needs to be sent to Mr. Shah that the
type of
5 behavior and operation that he's running is not
6 sufficient, and that he either needs to clean
up his
7 operation immediately, or -- And as Alderman
Dudzik
8 indicated, I intend to be around on this
committee
9 for awhile, too, and I've got a long memory.
10 CHAIRMAN WITKOWIAK: Motion by
Alderman Bohl
11 is to recommend renewal of this license with
a 10-day
12 suspension. On the motion? Are there any
objections
13 to that motion?
14 ALDERMAN PUENTE: I'll object.
15 ALDERMAN WADE: I'll object.
16 CHAIRMAN WITKOWIAK: I'll object,
also. So
17 the motion fails on a vote of three to two.
Alderman
18 Puente?
19 ALDERMAN PUENTE: Mr. Chair, I
would
20 recommend a 90-day suspension based on the
police
21 report and on neighborhood objection.
22 CHAIRMAN WITKOWIAK: Motion by
Alderman
23 Puente is to recommend a renewal of this
license with
24 a 90-day suspension based on neighborhood
objections.
25 On the motion?

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1 ALDERMAN BOHL: Mr. Chairman?

2 CHAIRMAN WITKOWIAK: Alderman

Bohl.

3 ALDERMAN BOHL: I don't want to be

4 Mr. Schrimpf's mouthpiece, but there is no

way in

5 God's green earth that this one sticks

period. It

6 just doesn't, given the testimony here. We

have

7 testimony that says that a woman, who's a

neighbor,

8 has seen a couple individuals at one point who

9 appeared young to her, the property's condition

is

10 no good, and that there's a number of other

11 establishments, gas stations, down the line in

another

12 community that has sales, and she doesn't believe

that

13 it's necessary. That's not sufficient for 90

days.

14 It just isn't.

15 As much as at times there's

frustration on

16 this committee when you know that there's greater

17 problems than what meets the eye, we've got to

go with

18 what meets the eye, and ultimately this committee

has

19 to stand by the letter of the law and has to

maintain

20 an issue of consistency, and that has not been

met

21 here. It's a frustration of mine. There are

times

22 where I've walked away frustrated, believing

that more

23 needs to be done, but we are also bound by the

letter

24 of the law, and unfortunately this doesn't meet

the

25 criteria for 90 days with what we have before us.

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1 ALDERMAN WADE: Mr. Chair?

2 CHAIRMAN WITKOWIAK: Thank you,

Alderman

3 Bohl. Alderman Wade.

4 ALDERMAN WADE: No disrespect to my
5 colleague from the 5th, but I would like to hear
6 from Mr. Schrimpf on his opinion on legally --

You

7 know, we were at 90, we're at 10. Some people
8 on this committee feel, you know, revocation is in order,

9 but legally we do have -- like my colleague said, we
10 do have legal bounds, and legally, could you

comment on
11 this, please?

12 MR. SCHRIMPF: Well, from a legal
13 point of view and without going into a whole lot of
14 detail,
15 Alderman Bohl said nothing that I would disagree
16 with.

17 CHAIRMAN WITKOWIAK: Can you not take
18 into consideration the totality of the police
19 report? Why
20 did we move to make this part of the record in
21 this hearing if we in fact cannot consider it at the
22 time of decision making? That's my
23 question.

24 MR. SCHRIMPF: Well, you
25 certainly can
26 consider the entire record of the licensee,
27 bearing
28 in mind that last year the committee gave a
29 45-day
30 suspension, but --

31 CHAIRMAN WITKOWIAK: But then does
32 that say
33 that -- does that say you're punished for
34 everything

00035

1 that's happened up until this date, and you go
forward

2 from there, or can you consider the totality?

3 MR. SCHRIMPF: No. The argument,

4 Mr. Chairman, would be more in the nature of the
fact

5 that the licensee has not corrected or
sufficiently

6 corrected the behavior from the previous years,
but

7 here's the Catch-22. The behavior from the
previous

8 years is heavily salted with underage
violations, and

9 I tend to agree with what Alderman Bohl said,
that

10 right now you have to look at what you have this
year.

11 Absent underage violations, you have to look at
what

12 the objecting neighbor said, and the committee
has to

13 evaluate as to whether or not that equals a
90-day

14 suspension. So I think Alderman Bohl's
observations

15 were, quite frankly, accurate.

16 ALDERMAN PUENTE: Mr. Chairman.

17 CHAIRMAN WITKOWIAK: Alderman Puente.

18 ALDERMAN PUENTE: I know that this
committee

19 has in the past looked at past suspensions, so
are you

20 telling me that we cannot do that then?

21 MR. SCHRIMPF: Well, you can look at
the

22 fact that the license was suspended last year,
and

23 that last year there was a 45-day suspension,
and you

24 can look at the testimony of the objecting
neighbor

25 from this year to examine whether or not there
has

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1 been any kind of real improvement, and you've
got to
2 weigh that all in and come up with something
that's
3 appropriate in terms of action, if that's the
way the
4 committee wants to go.

5 ALDERMAN PUENTE: Mr. Chairman.

6 CHAIRMAN WITKOWIAK: Alderman
Puente.

7 ALDERMAN PUENTE: Okay. Then I need
to add
8 the 45-day suspension that the agent received
last
9 time, and that's why -- another reason why I
recommend
10 the 90-day suspension. Is that okay?

11 MR. SCHRIMPF: Well, --

12 ALDERMAN PUENTE: Yes or no?

13 MR. SCHRIMPF: Putting me in a yes
or no, I

14 kind of come down no. Here's the point. There
really
15 is nothing inconsistent in giving a 45-day
suspension

16 last year, and for events that occurred this
year, a

17 10-day suspension. There's nothing
inconsistent about

18 it.

19 ALDERMAN PUENTE: Or the other way,
going
20 from 45 to 90 or whatever?

21 MR. SCHRIMPF: Well, you have to --

22 ALDERMAN PUENTE: Is there anything
wrong

23 with that?

24 MR. SCHRIMPF: This is the
committee's

25 judgment, this isn't mine. But you have to look
at

00037

1 whether or not the objecting testimony this
year is
2 equal to a 45-day suspension, if you want to
look at
3 it that way, added on to the suspension last
year.

4 ALDERMAN PUENTE: Mr. Chair?

5 CHAIRMAN WITKOWIAK: Alderman
Puente.

6 ALDERMAN PUENTE: Can I take -- or ask
what
7 the 45-day suspension was last year? Can I get
that?

8 MR. SCHRIMPF: Mr. Chairman, I do have
-- I
9 obtained a copy, and I think Mr. Copeland also
has
10 a copy, of the Findings of Fact from last year.
I'd
11 be happy to submit them to the committee. I
think
12 counsel probably has a copy of that from last
year.

13 ALDERMAN PUENTE: I would like to be
14 enlightened on what the reason was for the
45-day

15 suspension, neighborhood objection or --

16 CHAIRMAN WITKOWIAK: Alderman

Puente moves

17 to make the Finding of Fact for the previous
18 suspension as part of the record in this
hearing, and
19 hearing no objection, so ordered.

20 MR. SCHRIMPF: Last year, it was
based on
21 the police report last year.

22 ALDERMAN PUENTE: So at that time the
agent
23 was charged with two underage drinking?

24 MR. SCHRIMPF: I think -- Let me look
at
25 that for a second.

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1 ALDERMAN PUENTE: Because it doesn't
say
2 that.

3 MR. SCHRIMPF: Mr. Copeland, this
isn't a
4 complete set of findings.

5 CHAIRMAN WITKOWIAK: Is it the wrong
one?

6 MR. SCHRIMPF: No, it's the right
one, but
7 it -- This is more like it. Let the record
reflect
8 that the committee is being shown -- Apparently
what
9 was printed was not right.

10 ALDERMAN BOHL: Mr. Chairman, just
a
11 question for Mr. Schrimpf.

12 CHAIRMAN WITKOWIAK: Alderman Bohl.

13 ALDERMAN BOHL: Mr. Schrimpf,
certainly
14 you have indicated here that we can, as part of
the
15 overall record, consider new items that occur
within
16 the last licensing year as part of the totality
of the
17 record, and it may be a consistent pattern, but
I'm
18 going to guess, and maybe you can clarify, at no
point
19 do I believe that we can, in essence, undertake
what
20 would be termed as double jeopardy; in essence,
if
21 there were a past sentence, and there was a
suspension
22 based on past sentence, we can't turn around and
whack
23 a person, -- and pardon my blunt expression, --
but we
24 can't whack a person again this year because you
were
25 upset about what happened two or three years ago.

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1 MR. SCHRIMPF: That is absolutely
correct,

2 Mr. Chairman.

3 CHAIRMAN WITKOWIAK: Then why do you
4 consider the totality of the police record?

5 MR. SCHRIMPF: Because you examine the
6 police report, Mr. Chairman, to see if conduct in
the
7 past continues in the future.

8 CHAIRMAN WITKOWIAK: Then in fact you
can
9 consider those items.

10 MR. SCHRIMPF: To that extent you are
11 considering it.

12 CHAIRMAN WITKOWIAK: Okay. There's a
lot of
13 people at this table practicing law without a
license.

14 MR. SCHRIMPF: Not everybody. I hope
I'm
15 not included in that, Mr. Chair.

16 ALDERMAN PUENTE: Okay. I'm not going
to go
17 through and waste the committee's time with all
these
18 people here, so I can see where he was cited
several

19 times in that period
that I see, and that was my
20 question. Would anybody
else like to read this? It's
21 a short novel.

22 CHAIRMAN
WITKOWIAK: The motion on the
23 table by Alderman Puente
is to recommend renewal with
24 a 90-day suspension.

25 ALDERMAN

WADE: Mr. Chair.

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1 CHAIRMAN

WITKOWIAK: Alderman Wade.

2 ALDERMAN

WADE: I'd like to offer a friendly
3 amendment if possible.

4 CHAIRMAN

WITKOWIAK: Put it on the table and
5 we'll discuss it.

6 ALDERMAN

WADE: I'd like to recommend a 15-
7 day suspension based on
a neighborhood complaint and
8 the totality of the
police record.

9 CHAIRMAN

WITKOWIAK: Alderman Puente?

10 ALDERMAN

PUENTE: Yes, based on the
11 information that I just
read and the totality of the
12 circumstances involving
this case, I would be in
13 approval of the 15-day
suspension.

14 CHAIRMAN

WITKOWIAK: Okay. Then the
amended

15 motion by Alderman
Puente, amended by Alderman Wade,
16 is the renewal of this
license with a 15-day
17 suspension, and I'll
have the clerk please call the
18 roll.

19 MS. ELMER:

Alderman Bohl?

20 ALDERMAN

BOHL: Aye.

21 MS. ELMER:

Alderman Puente?

22 ALDERMAN

PUENTE: Aye.

23 MS. ELMER:

Alderman Wade?

24 ALDERMAN

WADE: Aye.

25

Alderman Dudzik?

MS. ELMER:

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1

ALDERMAN

DUDZIK: Aye.

2

MS. ELMER:

Mr. Chair?

3

CHAIRMAN WITKOWIAK: Aye. Motion

carries

4

five to zero.

5

MR. SCHRIMPF: Mr. Bangert, the
committee is

6

going to be doing Findings of Facts and

Conclusions of

7

Law recommending the renewal of this license with

a

8

15-day suspension. You'll have an opportunity

to

9

receive a copy of that recommendation as well

as

10

submit written objections and appear personally

when

11

the Common Council meets on this matter at 9 a.m.

on

12

the 27th, July 27th, 2004, in the Common Council

13

Chambers of this building, same floor, opposite

end.

14

MR. BANGER: Thank you.

15

* * *

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2 STATE OF WISCONSIN)
3 MILWAUKEE COUNTY) ss:

4

5

6

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21 Dated this day of , 2004

22 Milwaukee, Wisconsin

