

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRlich
LEONARD A. TOKUS
VINCENT J. BOBOT
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN Z. BLOCK
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
BETH CONRADSON CLEARY
THOMAS D. MILLER
HEIDI E. GALVÁN
Assistant City Attorneys

January 8, 2008

Honorable Common Council
City Hall, Room 205

Re: Claim of Tamara Norwood-Thomas Relative to the Denial of a
Class "B" Tavern License for the Premises Located at
5950 North 76th Street, Milwaukee, Wisconsin

Dear Council Members:

On September 7, 2007, Ms. Tamara Norwood-Thomas filed a claim with the City of Milwaukee relative to the denial of a Class "B" Tavern license at the above-referenced location. The claim seeks unspecified damages in an amount, "...well in excess of \$2,000,000.00." Although very lengthy, and filled with allegations against Alderman Davis, the nub of Ms. Norwood-Thomas' "claims" are as follows:

1. The fact that Alderman Joe Davis, Sr. was not supportive of her getting a Class "B" Tavern license for the premises located at 5950 North 76th Street;
2. The claim that Alderman Davis defamed Ms. Norwood-Thomas in matters that are not clearly set forth in the notice of claim;
3. That Alderman Davis racially discriminated against the intended clientele of the proposed Class "B" Tavern license at 5950 North 76th Street (specifically African-Americans); and
4. Discrimination against Ms. Norwood-Thomas because Alderman Davis incorrectly referenced a criminal conviction

that she had for possession with intent to deliver cocaine as opposed to distribution of cocaine in violation of the Wisconsin Fair Employment Act, § 111.321, Wis. Stats.

At the outset, our review of the claim demonstrates that it fails to meet the requirements of state law regarding itemizing claims. For example, in Subsection C of the notice of claim it states:

Defamation of Character – Alderman Davis made defamatory statements to various people involving the character of Ms. Norwood-Thomas and the intentions of her restaurant. Statements were made to attorneys, block club residents, and council members when at the Licensing Meeting (sic). 942.01 Defamation. (1) (2).

Misleading Statements – On numerous occasions, Alderman Davis made misleading statements, which became detrimental in Ms. Norwood-Thomas's (sic) attempts to secure a liquor license. These statements were initially made to the Grantosa Block Club where Alderman Davis stated that the business was going to be a bar. He made numerous statements when at the Licensing Committee Meeting (sic). He continued to make the same statements when in fact he had in his possession a plan of operation in which we detail our business operation. The business was always intended to be a restaurant with a bar. Never just a bar." (sic).

Under controlling law the Wisconsin Supreme Court has ruled:

“Under these definitions, [referring to Webster's Third New International Dictionary defining “itemize.”] of which we take judicial notice, it is apparent that sec. 893.80 (1) (b), Stats., requires a list, item by item, of the kinds of relief sought. One kind of relief sought might be, as here, money damages. In another case, it might be a demand for relief by specific performance or by injunction. It should be noted that sec. 893.80 is not a statute only applicable to tort claims or claims for negligence. The opening sentence of sec. 893.80 recites its applicability to any cause of action. Sec. 893.80, when initially enacted by the legislature, applied only to tort claims, but, by ch. 284, Laws of 1977, the procedures were made generally applicable to any claims against the listed governments...”

Figgs v. City of Milwaukee, 121 Wis. 2d 44, 52, 357 N.2d 548, 553 (1984)

Accordingly we conclude that the claim, though lengthy, fails to itemize any claims in a manner required by the *Figgs, supra*, standard.

We believe that this claim must fail for other reasons, aside from its failure to meet the itemization requirements set forth in Wis. Stat. § 893.80 (1) (b).

A recording of the hearing, included with the notice of claim, was reviewed for purposes of preparing this review of the claim of Ms. Norwood-Thomas. Under Wis. Stat. § 125.04 (5) 1., the police record of an alcohol beverage license applicant must be checked and reviewed by the licensing authority prior to any such license being issued.

Ms. Norwood-Thomas was represented at the hearing before the Licenses Committee by Attorney David Bangert, an individual who regularly appears before the Licenses Committee on various license applications, and who is skilled in such work.

A review of the testimony of the concerned neighbors indicated that they were overwhelmingly opposed to a tavern and tavern dance license going in at this location for reasons of safety, cruising, parking, noise, litter, and the problems generally raised when alcohol beverage establishments go into areas where there is not sufficient parking. The neighbors had recently gone through a difficult period involving an operation that was known as "Club H20," and which was only a dance club and did not have an alcohol beverage license. They were subjected to numerous incidents of cruising, fighting, noise, and unruly behavior by patrons of that establishment. They did not want to see that reoccur in their neighborhood, and were concerned that the nature of this establishment, which was not well defined by Ms. Norwood-Thomas herself, and which kept shifting, would be a source of a renewal of such problems.

There were, however, other concerns that they expressed. Among the concerns of the neighbors was the fact that they did not know about the restaurant portion of the operation of this premises until after Ms. Norwood-Thomas had met with three neighborhood organizations (facilitated by Alderman Davis) and the fact of the existence of a restaurant operation was not made known to them until the meeting before the Licenses Committee. That made it appear, along with the rather limited menu that was also provided by Ms. Norwood-Thomas, that the restaurant operation was a last minute after thought, not a genuine effort at having a

restaurant that would be a full service restaurant. Another concern of the neighbors was the fact that the application also contained an application for a tavern dance license and a billiard hall license, which was withdrawn in a letter dated March 8, 2007, and after some of the neighbors had a meeting with Ms. Norwood-Thomas.

The neighbors themselves were fairly evenly balanced as between African-American and non-African-American. Two individuals appeared in support, one who was African-American, and one who is not African-American and who is the building owner.

Alderman Davis was concerned about a number of matters concerning the issuance of a Class "B" Tavern license at this location. Among those concerns was that some of the parking being across the street from this location on 76th Street, which is a state highway, and which would pose potential safety problems particularly if patrons were intoxicated and jaywalking. Alderman Davis did reference the conviction record of the applicant, which included a conviction on a charge of possession with intent to deliver cocaine-based drugs and resisting or obstructing an officer. During the hearing Alderman Davis referred to that conviction as one for "distribution of cocaine," a fact that Ms. Norwood-Thomas raises in her letter as a form of discrimination against her under the Wisconsin Fair Employment Act, and because distribution of cocaine was not what she was convicted of, rather, she was convicted of possession of cocaine with intent to deliver. In addition, Alderman Davis noted that the applicant used both a married name and a maiden name on various applications and documents referring to the corporation, and he did question, as a result of that, the ability of individuals to know who really was going to be operating the premises, and the ability to contact them if there were problems. The use of two different names on the applications for the Class "B" license and the incorporation's papers caused him some concern.

Alderman Davis also noted that there is increased drug activity in the area of this tavern and in that vein mentioned the conviction of the applicant for possession with intent to deliver cocaine.

It is certainly true that in his effort to represent his district, Alderman Davis determined that the application of Ms. Norwood-Thomas was not in the best interests of the residents of the area. While he was opposed, and while a number of individuals of various racial identities also opposed the application of Ms. Norwood-Thomas, the recommendation for denial was made not by him, but by the Licenses Committee.

It is clear that there was more than an adequate basis upon which to recommend denial of this license, and it does not appear that any of the reasons indicated by the Licenses Committee for denial were in any way racially motivated, or not supported by the factual record which was developed.

Ms. Norwood-Thomas obviously feels that she has been maligned as a result of the process of having her record checked and reviewed by the Licenses Committee and the statements that were made by various persons regarding her proposed restaurant/tavern/billiard hall operation. Her claims, such as they are, include ones for discrimination, racial and arrest and conviction record, and defamation.

Given the fact that many of the opponents of her proposed tavern license for this premises included individuals of identical ancestry and racial identification as her, there is no basis for concluding that racial animus was involved in the opposition to her proposed tavern license. While Alderman Davis may have mischaracterized the exact nature of Ms. Norwood-Thomas' exact criminal conviction it is so slight a mischaracterization, given the factual record that was presented, as to hardly amount to a cause of action against the City of Milwaukee. In particular, Wis. § 111.335(cs) [a portion of what is known as the Wisconsin Fair Employment Act] provides in relevant portion:

“(cs) Notwithstanding s. 111.322, it is not employment discrimination because of a conviction record to revoke, suspend or refuse to renew a license or permit under ch. 1256 if the person holding or applying for the license or permit has been convicted of one or more of the following: ...

2. Possessing with intent to manufacture, distribute or deliver, a controlled substance or controlled substance analog under s. 961.41 (1m).

Obviously Ms. Norwood-Thomas was convicted of such a charge, and therefore the Licenses Committee would have been well within its range of discretion to recommend denial her proposed license, in part, because of that conviction.

Finally it must be borne in mind that the Licenses Committee made the recommendation it did because of the neighborhood objections, and not the police record of Ms. Norwood – Thomas, as is reflected by the letter of Mr. Ronald Leonhardt dated May 30, 2007 following the Common Council adoption of the

Honorable Common Council

January 8, 2008

Page 6

Licenses Committee recommendation. The neighborhood objections were based upon the testimony of the neighbors, and did not turn on her police record or the concerns of Alderman Davis.

For all of the foregoing reasons we recommend denial of this claim.

Very truly yours,

GRANT F. LANGLEY
City Attorney

BRUCE D. SCHRIMPF
Assistant City Attorney

BDS:wt

c: Ronald D. Leonhardt, City Clerk

127350