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CITY OF MILWAUKEE
UTILITIES & LICENSING HEARING

In the Matter of:
PHOENIX BAR AND GRILL
6222 West Fond du Lac Avenue

COMMITTEE MEMBERS

ALD. JAMES BOHL, JR. - Chairman
ALD. JOSEPH A. DUDZIK
ALD. ROBERT PUENTE
ALD. WILLIE WADE

HEALTH DEPARTMENT by PANDORA BENDER
POLICE DEPARTMENT by SERGEANT CHET ULICKEY
CITY ATTORNEY'S OFFICE by BRUCE SCHRIMPF
ALDERMANIC AIDE SHERMAN MORTON - 2nd District

MICHAEL WHITCOMB - ATTORNEY AT LAW, 633 West Wisconsin Avenue, Milwaukee, Wisconsin, appeared on behalf of the applicant.

Proceedings had and testimony given in the above-entitled matter before the UTILITIES & LICENSING COMMITTEE OF THE CITY OF MILWAUKEE on the 3rd day of January, 2006, before Terese M. Schiebenedes of Milwaukee Reporters Associated, Inc.

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PROCEEDINGS

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CHAIRMAN BOHL: On our 2:30 agenda, we have Andrea Chavis, agent for Diamond Food & Beverage, Incorporated, Class B Tavern and Tavern Amusement renewal applications and request for permanent extension of the Class B premises to include the entire first floor, entire second floor, and second floor storage for Phoenix Bar and Grill at 6222 West Fond du Lac Avenue. Good afternoon.

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MR. WHITCOMB: Good afternoon, Mr. Chairman. My name is Michael Whitcomb. I'm an attorney representing the applicant. We acknowledge receipt for notice of today's hearing.

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CHAIRMAN BOHL: Thank you, Mr. Whitcomb. Ms. Chavis, raise your right hand, we'll swear you in, even though this may be a continuation. And Sherman Morton is here, as well, too.

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(ANDREA CHAVIS and SHERMAN MORTON were duly affirmed.)

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CHAIRMAN BOHL: You've already acknowledged notice, but we'll get it under oath. Do you acknowledge receiving notice of today's meeting with the possibility your application could be denied? There is an item in the attached police report as well as neighborhood objections.

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1 MS. CHAVIS: Yes.

2 MR. WHITCOMB: Yes.

3 MR. SCHRIMPF: Mr. Chairman.

4 CHAIRMAN BOHL: Mr. Schrimpf, do you want to
5 just provide some history here for those in the
6 audience who may not have seen this before.

7 MR. SCHRIMPF: I think that might be helpful
8 for both the committee plus the viewing audience.
9 This matter was heard by the committee some time ago
10 and was considered by the Milwaukee Common Council at
11 its meeting, I believe, of December 13th.

12 MR. WHITCOMB: The Utilities & License
13 Committee meeting was November 23rd.

14 MR. SCHRIMPF: And basically, the
15 recommendation of the committee was to not renew this
16 Class B License, and that was the decision of the
17 Milwaukee Common Council. On or about December 12th
18 or 13th, 2005, Ms. Chavis appealed that decision, as
19 she has a right to do under Section 125.12 of the
20 Wisconsin Statutes, in circuit court of Milwaukee
21 County, and she asked for an injunction to keep the
22 place going while the matter was under review.

23 A hearing on the injunction was conducted by
24 telephone, I believe it was Judge Noonan. Is that
25 right, Mr. Whitcomb?

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MR. WHITCOMB: Correct. I was in chambers,
and you were by phone.

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MR. SCHRIMPF: Right, you were in chambers,
the judge was in the chambers, I was on a telephone
hook-up. Basically, Judge Noonan decided not to issue
the injunction and actually dismissed the case without
prejudice with the agreement and understanding that
this matter would again be heard by this committee as
well as the Milwaukee Common Council in a new hearing,
and the stated reasons by the court were the
following:

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First, Ms. Chavis was not represented at the
first hearing, so the judge was concerned that she
should have an opportunity to have this matter
reconsidered by the full committee with the assistance
of counsel. And also, because the police report
contained Item No. 9, which is a single underage sale,
and the record did not disclose -- and I guess it was
true and people often wonder why I do these things --
but the record did not disclose that I gave the
committee the usual standard warning that you cannot
consider a single underage if there's not a second one
with a conviction within a year, and that did not
appear in the transcript, so we're correcting that
right now. You cannot do that.

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1 CHAIRMAN BOHL: Maybe we ought to sign a
2 letter to any prospective judge indicating that we all
3 understand that from sitting on this committee for
4 years and years and years, Amen.

5 MR. SCHRIMPF: The judges want to see it in
6 a transcript. So that's basically why we're here.
7 There was an agreement that the matter would be
8 reheard now with the assistance of counsel and with
9 the instruction that you cannot consider Item No. 9.

10 CHAIRMAN BOHL: Are there any questions for
11 Mr. Schrimpf from committee members? Otherwise, we
12 will go around the horn. And I don't know if we have
13 anything from the Health Department, but Neighborhood
14 Services?

15 MS. BENDER: No objection.

16 CHAIRMAN BOHL: Sergeant Ulickey, do you
17 want to reinvigorate us here with the police report
18 once again, because it's been some time.

19 ALDERMAN PUENTE: Don't tell us about No. 9.

20 CHAIRMAN BOHL: You can tell us about No. 9,
21 we're just not supposed to consider it.

22 MR. SCHRIMPF: Counsel is here to object.

23 SGT. ULICKEY: Start with No. 7. On 1/22 of
24 '05 at 8:00 p.m. at Froedtert Hospital, a Milwaukee
25 detective interviewed a victim of a shooting. Victim

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1 stated that he had been at Phoenix --

2 MR. WHITCOMB: Mr. Chairman and Mr.

3 Schrimpf, for the record, I would object as to any
4 testimony, any statement by any witness made to the
5 Milwaukee Police Department that's in the record
6 contained herein, based upon grounds of hearsay,
7 double hearsay, and if we get into the two incident
8 reports, triple hearsay. I understand that there's a
9 public record exception to the hearsay rule, but it
10 specifically states the reports made upon the
11 declarance observation, not based upon what is heard
12 or said. So for the record, before that is read into
13 the record by the sergeant, I want to have my
14 objection noted.

15 CHAIRMAN BOHL: Okay. Your objection is
16 duly noted, and we will ask the sergeant to please
17 proceed forward.

18 MR. WHITCOMB: Pardon my interruption, sir.

19 SGT. ULICKEY: The victim stated that he had
20 been at the Phoenix Tavern, 6222 West Fond du Lac
21 Avenue. He had been there to perform rap songs with
22 other artists. As he was leaving the tavern, he was
23 getting into the front passenger seat of his manager's
24 car, and then suddenly gut shots were fired at the
25 vehicle, then felt two bullets enter his chest. As he

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1 pretended to be dead in the vehicle, the shooter
2 reached in and took his wallet from his back pants
3 pocket. There was an armed robbery and wreckless
4 injury report filed.

5 And on 2/14 of '05 at 6222 West Fond du Lac
6 Avenue at 9:55 p.m., Andrea Chavis issued Milwaukee
7 municipal citations for Class D bartender's license
8 required and posting of occupancy capacity. The Class
9 D bartender's license was dismissed without prejudice,
10 and posting of occupancy she was found guilty and
11 fined \$100.

12 And on 3/21/05 at 6222 West Fond du Lac,
13 9:20 p.m., Andrea Chavis was issued a municipal
14 citation for sale of alcohol to underage person. She
15 was found guilty and fined \$125.

16 CHAIRMAN BOHL: One moment here. Mr.
17 Schrimpf, just for clarification sake, again, Item No.
18 6 was available for the committee to consider because,
19 if my recollection serves me correct, that was not
20 considered on the previous indication, and there was a
21 specific motion made that that would carry over. Item
22 No. 6, there was a guilty adjudication for illegal
23 occupancy. Is that correct, Mr. Schrimpf?

24 MR. SCHRIMPF: That is correct, Mr.
25 Chairman.

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1 CHAIRMAN BOHL: Is there anything else you
2 wanted to add here, Sergeant Ulickey?

3 SGT. ULICKEY: No, sir.

4 MR. SCHRIMPF: In light of the objection by
5 counsel, I would ask, when you were reading this
6 report, what is this report that you were reading
7 from, Sergeant?

8 SGT. ULICKEY: This is a police attachment
9 that is provided to the License Division by our police
10 department.

11 MR. SCHRIMPF: And how are those attachments
12 generated?

13 SGT. ULICKEY: The attachments are based off
14 of a police Report of Incident on a licensed person or
15 premise.

16 MR. SCHRIMPF: And are these reports
17 generated by the License Investigation Unit members?

18 SGT. ULICKEY: Yes, they are.

19 MR. SCHRIMPF: And are they under your
20 supervision and control?

21 SGT. ULICKEY: Yes, they are.

22 MR. SCHRIMPF: And are they reported in the
23 ordinary and general conduct of business in the
24 Milwaukee Police Department?

25 SGT. ULICKEY: Yes, they are.

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1 MR. SCHRIMPF: That's all I have.

2 CHAIRMAN BOHL: Thank you, Mr. Schrimpf.

3 Mr. Whitcomb, are there any questions or comments you
4 want to make relating to items contained in the police
5 report at this point?

6 MR. WHITCOMB: Yes. Without waiving the
7 protection of having the sale to minor not being
8 considered at this particular hearing because no
9 similar offense had occurred within 12 months, I just
10 ask the sergeant if he is aware that that citation was
11 a result of what we refer to as a police sting
12 operation?

13 SGT. ULICKEY: I don't have that indication
14 here.

15 MR. WHITCOMB: Nothing further, Mr.
16 Chairman.

17 CHAIRMAN BOHL: At this point, I would turn
18 this over here to Alderman Davis's office. Mr.
19 Morton, is there any statement, opening statement, you
20 want to provide at this point?

21 LEGISLATIVE AIDE: Other than Alderman
22 Davis's position has not changed. He's in approval of
23 maintaining the previous decision the committee made
24 in keeping the denial of the license, but other than
25 that, no. Just he wants it to remain as is, which is

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1 denial of the license.

2 CHAIRMAN BOHL: Mr. Whitcomb, do you want to
3 provide an opening statement at all?

4 MR. WHITCOMB: Perhaps I can do a combined
5 opening and closing.

6 CHAIRMAN BOHL: Before we do that, I just
7 don't know if there are any neighbors that are present
8 here to object to the license. Those individuals may
9 be here in support. This is cited for neighborhood
10 objection. If I may, before you proceed with that,
11 may I see a show of hands if there is any individual
12 who is present here for the matter of Diamond Food &
13 Beverage, Incorporated for Phoenix Bar and Grill at
14 6222 West Fond du Lac Avenue who is here to oppose
15 the license? Is there anyone here to object or
16 oppose the license, if you could show your hand, raise
17 your hand. I do not see anyone present.

18 I understood that because we have no other
19 items today that if individuals weren't opposed that
20 they may be here in favor. Mr. Whitcomb, go ahead,
21 please.

22 MR. WHITCOMB: Might I recommend we hear
23 from the neighbors in support, and then I can make an
24 opening and combined closing, which would wrap it all
25 together rather than repeating myself.

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1 CHAIRMAN BOHL: As long as the committee
2 members are fine, I would be okay with that.

3 ALDERMAN WADE: I do have a question to ask
4 of Mr. Morton before we proceed, if that's okay.

5 CHAIRMAN BOHL: Please, go ahead, Alderman
6 Wade.

7 ALDERMAN WADE: Mr. Morton, since this last
8 hearing and to this day, have yourself or Alderman
9 Davis had any dealings with the community or the bar
10 owners about this subject in between that time?

11 LEGISLATIVE AIDE: Yes, we did. On December
12 29th, which was last week Thursday, we actually had a
13 community meeting where we had roughly -- I think 15
14 to 20 individuals showed up for it. We didn't ask
15 anyone there to express they're either in favor of or
16 opposition of. Alderman Davis just made it known
17 whether you were in favor of or opposition of for you
18 to come to the meeting today and state what your case
19 was.

20 ALDERMAN WADE: Now, did you have any
21 conversation or contact with the business owners
22 between that time?

23 MR. WHITCOMB: Mr. Chairman, I don't believe
24 Mr. Morton was in the office at the time, but there
25 was a meeting for about an hour with Assistant City

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1 Attorney Bruce Schrimpf and representatives of the
2 hotel and Alderman Davis, and that was on December
3 19th. It was in the holiday season.

4 ALDERMAN WADE: Were you aware of that, Mr.
5 Morton?

6 LEGISLATIVE AIDE: Yes, I was. I forgot
7 about that. Yes, sir, he's correct.

8 MR. SCHRIMPF: Mr. Whitcomb was also at that
9 meeting.

10 ALDERMAN WADE: I just wanted to see if
11 there was any dialogue between now and then with the
12 representative from that district and the business
13 owner between that time. So thank you.

14 MR. WHITCOMB: Thank you. To follow up on
15 your question, Alderman, the meeting on the 29th was
16 called by Alderman Davis, and also at his
17 recommendation and our representation to him at our
18 meeting of the 19th, we also canvassed the
19 neighborhood and had a neighborhood meeting the
20 following day on December 30th.

21 ALDERMAN WADE: Thank you.

22 CHAIRMAN BOHL: All right. Mr. Whitcomb,
23 what we'll do is we have two chairs that are
24 unoccupied here. If individuals who are wishing to
25 come forward to testify could please take these two

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1 chairs. If there is anyone in the interim time who
2 wishes to testify, if they could just occupy the first
3 row, then we could expedite this. We would ask that
4 you would provide your name and address for the
5 record, and I'm certain we were looking for only
6 relevant testimony as to this, but knowing your
7 history, Mr. Whitcomb, I'm certain that you will
8 direct them here in terms of questioning.

9 MR. WHITCOMB: Perhaps, Mr. Chairman, you
10 can swear in all the witnesses together.

11 CHAIRMAN BOHL: Any person who wishes to
12 provide testimony, if you could just raise your right
13 hand, and we will swear you all in.

14 (All speakers were duly affirmed.)

15 CHAIRMAN BOHL: Ma'am, we'll proceed with
16 you. Name and address for the record, please.

17 MS. SWANNIGAN: Divartia Swannigan, 4351
18 North 70th.

19 CHAIRMAN BOHL: Please, proceed.

20 MS. SWANNIGAN: Well, I'm here for the
21 license, because I've known Andrea for the past 12
22 years and for the past eight years, I've had every
23 family function there. I've never come across
24 anything that I've heard in the police report, maybe
25 because it might have happened before I got there or

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1 afterwards, but as far as any problems, I've never had
2 any problem. I've had numerous family reunions, I've
3 had my wedding reception there, I have my husband's
4 Jamaican New Year party every year.

5 So I don't see what the problem is. I've
6 never incurred. I've always felt safe, no matter if
7 I'm coming or going, what time I'm leaving out of
8 there. So I've never had any problem in the
9 establishment at all or seen anything that I thought
10 might have been against the law going on there. I've
11 even held my daughter's 21st birthday there.

12 CHAIRMAN BOHL: Questions by committee? Any
13 questions of the alderman's office?

14 LEGISLATIVE AIDE: No.

15 MR. WHITCOMB: Ms. Swannigan, you indicated
16 that you've been attending the Phoenix Bar and Grill
17 for about three or four years?

18 MS. SWANNIGAN: I've been attending as far
19 as a patron like three or four years when I get off of
20 work, but for the past eight years I've been holding
21 my own family functions there.

22 MR. WHITCOMB: Since the Phoenix Bar and
23 Grill opened in about 1997 then?

24 MS. SWANNIGAN: Yes.

25 MR. WHITCOMB: And how many functions,

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1 family or social functions, would you have per year?

2 MS. SWANNIGAN: If it's a normal year,
3 probably six. This year, I'm planning on to have at
4 least eight.

5 MR. WHITCOMB: And are those functions
6 conducted during the day or in the evening?

7 MS. SWANNIGAN: They start during the day,
8 probably 4:00 in the afternoon and will end at bar
9 time.

10 MR. WHITCOMB: At the time you've had the
11 functions there, have you been treated with respect by
12 the owners and the proprietors of the establishment?

13 MS. SWANNIGAN: I've been treated as if I
14 was family.

15 MR. WHITCOMB: And going to and from the
16 establishment from the street, have you ever had any
17 concern about the activity on the street around the
18 establishment?

19 MS. SWANNIGAN: I have more concern about my
20 neighborhood more than I would leaving out of the
21 Phoenix.

22 MR. WHITCOMB: Are there any other
23 black-owned hotels and restaurants that you could have
24 these functions at in the City of Milwaukee?

25 MS. SWANNIGAN: No.

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1 MR. WHITCOMB: And at the time you have your
2 functions there as well as the time that you go there
3 socially yourself individually, has there been
4 security on the premises?

5 MS. SWANNIGAN: There's always been
6 security. Security normally, when I have my
7 functions, they make sure that as a person is leaving
8 as a single individual they walk them to their car,
9 and they make sure they get in there, start it up, and
10 lock their door. Me or none of my family members have
11 ever had a problem there.

12 MR. WHITCOMB: At one time parking was
13 available for the Phoenix Bar and Grill north of the
14 property, correct?

15 MS. SWANNIGAN: Yes.

16 MR. WHITCOMB: That's no longer available
17 for parking because of the problems it caused?

18 MS. SWANNIGAN: I'm not sure. I just kind
19 of figured the new owner of the building next to it
20 just didn't want anybody parking in there.

21 MR. WHITCOMB: However, there is quite a bit
22 of parking available at the hotel, which is on Fond du
23 Lac just to the south, correct?

24 MS. SWANNIGAN: Yes.

25 MR. WHITCOMB: Have you ever had any

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1 problems parking there?

2 MS. SWANNIGAN: No.

3 MR. WHITCOMB: And you would recommend to
4 this committee to recommend to the Common Council to
5 renew the licenses for the Phoenix Bar and Grill?

6 MS. SWANNIGAN: Yes.

7 MR. WHITCOMB: No other questions, Mr.
8 Chairman.

9 LEGISLATIVE AIDE: Mr. Whitcomb made mention
10 in regards to the black-owned hotel. The hotel
11 actually isn't in question, we're really just dealing
12 with the Phoenix Bar and Grill. The hotel is the
13 Diamond Inn Hotel, which is not what we're dealing
14 with today, so that question regards to are there any
15 other black-owned hotels to have functions at is kind
16 of irrelevant because we're not talking about the
17 hotel right now.

18 MR. WHITCOMB: I don't mean to argue. I
19 think I mentioned the combination of a hotel and
20 restaurant, because the restaurant is adjacent to and
21 connected to the hotel.

22 MR. SCHRIMPF: Now we have a slight
23 confusion in the record. Ma'am, Ms. Swannigan, when
24 you have your functions, are they at the Phoenix Bar
25 and Grill or are they at the Diamond Inn Hotel?

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1 MS. SWANNIGAN: Majority, if anybody is too
2 intoxicated to leave, I will insist that they go next
3 door and get a room. That's a must with me.

4 MR. SCHRIMPF: The functions themselves are
5 at the Phoenix Bar and Grill?

6 MS. SWANNIGAN: The functions are at
7 Phoenix, but they have had times the spillover into
8 the Diamond Inn, where I've had to leave family
9 members go get a room.

10 MR. SCHRIMPF: Because, in your estimation,
11 they were intoxicated?

12 MS. SWANNIGAN: I snatch car keys when I
13 think you've had too much to drink.

14 CHAIRMAN BOHL: Any other questions by
15 committee members at this point? Ms. Swannigan, thank
16 you.

17 MR. WHITCOMB: Thank you, ma'am.

18 MR. TATE: Marcus Tate, 6143 West Leon
19 Terrace.

20 CHAIRMAN BOHL: Please, proceed.

21 MR. TATE: Well, I've been there for a
22 number of years. I've always noticed a strong
23 presence as far as security goes, never had any
24 problems coming and going as far as leaving home. I'm
25 in full support of the bar. I've never actually

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1 attended any functions, but I have stopped in, and
2 there was no rowdiness, no uncontrollable crowds. It
3 seemed to be a pretty nice place.

4 CHAIRMAN BOHL: How often do you frequent
5 the tavern?

6 MR. TATE: Well, I live directly in back of
7 the bar, so I mean, if there is anything going on
8 really noise-wise or something that a person could
9 have a complaint about, I'd recognize it right away.
10 I've stopped in a number of times, but I'm not the
11 kind that just hangs out, so that's me. It's the type
12 of place that you can go, you can have a nice time,
13 enjoy yourself, and they should have an opportunity to
14 exist in the community.

15 CHAIRMAN BOHL: Is there anything else you
16 want to add here? Mr. Whitcomb?

17 ALDERMAN WADE: Mr. Chairman.

18 CHAIRMAN BOHL: Alderman Wade.

19 ALDERMAN WADE: Thank you. How long have
20 you lived directly behind this establishment?

21 MR. TATE: Over 15 years.

22 ALDERMAN WADE: So you lived there even
23 before it was --

24 MR. TATE: Yes.

25 ALDERMAN WADE: Thank you.

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1 CHAIRMAN BOHL: Are there questions by
2 committee, Mr. Morton, at this point?
3 LEGISLATIVE AIDE: No, sir.
4 CHAIRMAN BOHL: Mr. Whitcomb?
5 MR. WHITCOMB: Mr. Tate, do you own or rent?
6 MR. TATE: Rent.
7 MR. WHITCOMB: And how old a man are you?
8 MR. TATE: 41.
9 MR. WHITCOMB: And your residence is behind
10 the hotel/restaurant complex?
11 MR. TATE: Directly behind the entertainment
12 complex, directly behind there.
13 MR. WHITCOMB: The Phoenix Bar and Grill?
14 MR. TATE: Phoenix Bar and Grill.
15 MR. WHITCOMB: Prior to the time that the
16 Phoenix Bar and Grill was open, which was about 1997,
17 did you experience problems concerning the prior
18 ownership of the hotel?
19 MR. TATE: No.
20 MR. WHITCOMB: No further questions.
21 CHAIRMAN BOHL: Let me just ask one last
22 time. Any other questions of Mr. Tate by committee?
23 Mr. Tate, thank you very much. Sir, last witness.
24 MR. CONNER: My name is Leslie Conner, I
25 reside at 4545 North 60th Street. I've been there for

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1 26 years.

2 CHAIRMAN BOHL: Is that C-O-N-N-E-R?

3 MR. CONNER: E-R.

4 CHAIRMAN BOHL: Please, proceed.

5 MR. CONNER: Personally, I'm not a bar
6 person, I don't go and attend bars or nothing of that
7 nature, but I do observe activities and so forth, and
8 I don't see no different activities in that location
9 versus any other location. And as far as that rapper
10 goes, the rapper could be in here, and he could get
11 shot. Rappers, wherever they go, they're going to get
12 shot. So you really can't blame or try to put that
13 discount against the business established there.

14 Secondly, he got shot on the street getting
15 in his car, robbed on the street. It was on the
16 premises, though, of the motel. I didn't see nobody
17 bringing that up. Crime is very intense all over the
18 City of Milwaukee, and I think it's really due to
19 crime itself in general and not to the location in
20 which we are actually having before us in this hearing
21 today.

22 I am for the business. It's a black-owned
23 business, and we are short of black-owned business.
24 We need black businesses. I'm looking for Common
25 Council to try to work out a resolution to try to find

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1 out what is the problem, let's see what we can work
2 out to make this thing workable, rather than looking
3 for ways to close it and find ways of boarding up a
4 building. That's not what we're looking for. We have
5 too many boarded up buildings as it is. And I think
6 if we done something like that, a \$600,000 business, a
7 person going to adhere to whatever suggestions you
8 guys have.

9 That's pretty much what I have to say. I am
10 in support of the business, I want to see it work out.
11 I don't want to see nobody in bankruptcy and
12 close-out. That's about it.

13 Secondly, let me inject one other thing.
14 Prior to that business being there, it used to be a
15 railroad place for housing railroad. We had break-ins
16 in my garage even before the business even came about.
17 Now, I got a Rottweiler in my garage, I have no
18 break-ins. But it wasn't due to the bar. If these
19 bar people who actually cause problems, if you close
20 that facility down, we got two or three more. They're
21 not going to stop drinking, they're going to go to the
22 next bar or two and cause other problems.

23 I think it needs to be addressed to crime,
24 and hey, let's do something with criminals out here
25 and stop trying to put the fault on an establishment.

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1 CHAIRMAN BOHL: Mr. Conner, one or two
2 questions for you here. First off, you are,
3 approximately, one, two blocks away from this
4 establishment here?

5 MR. CONNER: Exactly.

6 CHAIRMAN BOHL: Have you been a patron of
7 this establishment at all here?

8 MR. CONNER: Like I said before, I don't
9 attend bars, I don't drink, I don't smoke. No, I am
10 not a patron for that at all, and I don't even go to
11 places like that, any bar, per se. It's just that's
12 what I don't do. But I'm looking at the activities in
13 my neighborhood.

14 CHAIRMAN BOHL: Were you made aware of this
15 through one of the neighborhood meetings that was
16 noted here?

17 MR. CONNER: There was a flyer that was
18 placed on my door by the alderman to come on the 29th,
19 which I was there. And the peoples that was there
20 actually was enlightened to the same idea I was, they
21 was not opposed, they was not for.

22 LEGISLATIVE AIDE: I object to that.

23 MR. CONNER: They never said anything, they
24 never gave a reply. Only one person gave a negative
25 reply, but majority didn't give a reply. Personally

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1 myself, I did. And the atmosphere, to me, felt that
2 hey, they really didn't know which way to go on any of
3 the issues.

4 CHAIRMAN BOHL: We appreciate your comments.
5 This committee is not in a position to take hearsay,
6 so in terms of what may have transpired with others,
7 we certainly appreciate that you were present and your
8 testimony here. Are there questions of Mr. Conner?
9 Alderman Wade.

10 ALDERMAN WADE: Yeah. I just want to make
11 sure that I'm clear on it, because I think Mr. Morton
12 mentioned it and I think he mentioned it kinda sorta,
13 but at that meeting, the invitation for people who
14 were for or against this particular establishment was
15 extended for them to appear on this date to voice
16 their opinion at that meeting?

17 MR. CONNER: I don't see them here, though.

18 ALDERMAN WADE: That was issued to them at
19 that meeting?

20 MR. CONNER: Yeah, um-hum.

21 ALDERMAN WADE: Did Alderman Davis give that
22 invitation?

23 MR. CONNER: Yes, he did.

24 ALDERMAN WADE: So whoever was for or
25 against it should have shown up on this day at this

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1 meeting to be heard regarding this establishment?

2 MR. CONNER: Exactly.

3 ALDERMAN PUENTE: Mr. Conner, did you hear
4 the last debate on this when it came before us
5 November 23rd?

6 MR. CONNER: No, I did not.

7 ALDERMAN PUENTE: So you didn't hear the
8 totality of the circumstances?

9 MR. CONNER: No. But I read some note on
10 the 29th what some of the questions about the business
11 establishment, things that have happened. If it
12 coming from that, I read that.

13 ALDERMAN PUENTE: No. There was testimony
14 given back on November 23rd that said that they had a
15 rap contest, if you will, inside, and there were two
16 groups going at it, and there was an argument that
17 happened inside of the bar, and that's what we
18 considered, also. Just so you know.

19 How many blocks did these flyers go out to
20 from the establishment?

21 LEGISLATIVE AIDE: I don't have the exact
22 radius here, but we sent the flyers out from --

23 ALDERMAN PUENTE: Approximate.

24 LEGISLATIVE AIDE: -- I'd say maybe eight
25 blocks in each direction.

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1 ALDERMAN PUENTE: Approximately how many
2 people would that have touched?

3 LEGISLATIVE AIDE: We sent out a total of, I
4 want to say the number was 300-something flyers that
5 were sent out total.

6 ALDERMAN PUENTE: Thank you. Thank you, Mr.
7 Chair.

8 CHAIRMAN BOHL: Other questions by
9 committee? Mr. Morton, anything that the alderman's
10 office has for Mr. Conner?

11 LEGISLATIVE AIDE: No. I just want to make
12 it clear that at the meeting Alderman Davis did not
13 ask anyone at the meeting if they were for or against.
14 Anyone who wanted to state their opinion, he told them
15 to come down here to state their opinion. He did not
16 take a consensus of who was for or who was against at
17 the meeting. In regard to what Mr. Conner was saying
18 in regards to how he felt more people were for or
19 against it, either/or, that wasn't stated at all.
20 There was no directive at all given for that.

21 MR. CONNER: One thing let me add to what he
22 stated. There was an option to speak your peace as
23 you felt. To me, that is for or against, if one chose
24 not to do so. That was open. He didn't say how to
25 speak, positive or negative, he said anyone has an

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1 opinion. So I had an opinion. That's the only way I
2 could speak. And the rest of them had an opinion, but
3 they never said anything. That's what I mean.

4 ALDERMAN PUENTE: Mr. Conner, so you're the
5 only one who spoke, is that correct, out of the 10 or
6 15 people that were there?

7 MR. CONNER: Pretty much. I'm not going to
8 say that, because after I spoke I left.

9 ALDERMAN PUENTE: So then you don't know.

10 MR. CONNER: I don't know. The meeting was
11 pretty much over when I left.

12 ALDERMAN PUENTE: Thank you, sir.

13 CHAIRMAN BOHL: Other questions by
14 committee? Mr. Whitcomb, any follow-up?

15 MR. WHITCOMB: No, Mr. Chairman. Thank you.

16 MR. CONNER: Thank you.

17 CHAIRMAN BOHL: Mr. Whitcomb, I'll let you
18 provide your opening and closing, and then we'll hear
19 again from Alderman Davis's office, and unless we have
20 additional questions, we'll take it into committee.
21 Go ahead, please.

22 MR. WHITCOMB: Thank you, Mr. Chairman. It
23 will be briefer than usual because this matter has
24 been before the committee, and I've expressed my
25 thoughts on behalf of the applicant before the Council

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1 in writing and in argument. I respectfully submit
2 that the matters contained in the police report that
3 may lawfully be considered at this meeting do not
4 warrant the recommendation of nonrenewal of the
5 licenses.

6 There was a very serious event which
7 occurred outside on the street, an armed robbery.
8 There's nothing in this record that in any way
9 indicates that the perpetrator was in the
10 establishment. I respectfully disagree with Alderman
11 Puente's suggestion that Ms. Chavis testified at the
12 earlier hearing that there was an argument inside the
13 establish. There was not that night.

14 At the establishment there were two groups
15 of representatives from two different music production
16 companies, and they sang or portrayed rap songs to one
17 another in a competitive nature.

18 ALDERMAN WADE: It's like a battle, like
19 a rap battle.

20 MR. WHITCOMB: Yeah, but not aggressively.

21 ALDERMAN WADE: That's what they call rap
22 contests, like a battle. So you kind of go against
23 each other back and forth. Is that what happened?

24 MR. WHITCOMB: Yeah, from a white person's
25 perspective, a dance contest where you get in a

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1 circle, one guy goes out and does his thing, then the
2 next guy goes out. These were dueling rappers, but it
3 wasn't aggressive, it wasn't competitive.

4 CHAIRMAN BOHL: May I just interject and
5 question you here?

6 MR. WHITCOMB: Sure.

7 CHAIRMAN BOHL: Is what you're indicating
8 here, this was impromptu, kind of an impromptu
9 contest, or was this a sanctioned contest by the
10 tavern?

11 MR. WHITCOMB: It was impromptu.

12 CHAIRMAN BOHL: That's what you're getting
13 at then, I think.

14 MR. WHITCOMB: One of the production
15 companies had been at the establishment on a regular
16 basis. They come in, they don't rent it, just for a
17 brief period of time they were regulars during a
18 business meeting. People, whatever they were doing,
19 it was business-like. There wasn't a planned contest,
20 it wasn't advertised, the facilities weren't rented,
21 it was just two groups that had met there that
22 evening, two different record companies or producers,
23 and they got into an exchange during their rap music.

24 It wasn't aggressive, it didn't result in
25 any bad feelings, and it's our belief, because we have

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1 no other belief, that the robbery which occurred
2 outside was at random, had nothing to do with what
3 transpired inside, and someone exited the
4 establishment, perhaps the perpetrator knew the
5 representative of the company was in there and was
6 lying in wait. From the looks of the police report,
7 they got in the car, bang, bang, bang, one person ran
8 off, he grabbed the wallet, the people left, and then
9 the police were involved.

10 I respectfully submit that this in no way is
11 attributable to the conduct of the establishment nor
12 the people who manage the establishment. It was a
13 robbery which occurred outside on the street. To deny
14 the continuation of this business because of the
15 street robbery would be akin to closing down every
16 bank that gets robbed. There's in no way any evidence
17 or tie-in for the conduct or the operation of the
18 facility to this particular armed robbery. No one
19 knows who the perpetrator was.

20 Given that circumstance and with the dirth
21 of any other ground to recommend nonrenewal of this
22 license, I think it would be highly inequitable -- and
23 it's an equitable standard that this court engages in
24 when it exercises its discretion in making a
25 recommendation -- I believe that this committee must

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1 keep in mind that this is not a stand-alone
2 establishment but is adjacent to, connected
3 financially with the Diamond Inn & Hotel, and to deny
4 the renewal of this license would not only impact the
5 license activity, but would impact the hotel activity,
6 as well.

7 Also, in your consideration today, please
8 keep in mind that effectively this establishment has
9 sustained a 33-day suspension and will sustain a 33-
10 day suspension if the recommendation of this committee
11 is to renew the license and that is approved by the
12 Common Council on the 18th. As Attorney Schrimpf
13 correctly noted, the court did not issue an injunction
14 pending the rehearing. It was partially in exchange
15 for a quick rehearing. That's why we're hear on the
16 3rd. But this establishment has not been licensed
17 since December 15th, and if the license is renewed,
18 they would not again be licensed to sell alcohol until
19 January 18th of this year. So I think that, too, when
20 you take into consideration the equities of this
21 matter, you may consider that a de-jour suspension has
22 already been sustained in this particular instance.

23 I appreciate the time that this committee
24 has devoted to this matter and to the Council and also
25 to the efforts of the City Attorney's Office.

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1 Regrettably, a full complete hearing was not conducted
2 on November 23rd in this matter, and I thank you for
3 taking this matter up, once again, on such a short
4 notice. Thank you.

5 CHAIRMAN BOHL: Thank you, Mr. Whitcomb.
6 Are there any questions at this time that members of
7 the committee have for Mr. Whitcomb or for the
8 applicant?

9 ALDERMAN PUENTE: If I remember correctly,
10 your testimony last time was that you did provide a
11 microphone for this rapping; is that correct?

12 MS. CHAVIS: I said that we have microphones
13 available.

14 ALDERMAN PUENTE: Did they use them that
15 evening?

16 MS. CHAVIS: Not to my recollection.

17 MR. WHITCOMB: Ms. Chavis works in the
18 kitchen, she's in the restaurant end of the
19 establishment, especially that particular evening.

20 ALDERMAN PUENTE: If my memory serves me
21 correctly, she said they did use them that evening and
22 this rap, as so eloquently described by Alderman Wade,
23 is a battle that they call it and that sometimes
24 feelings do get hurt, and it can escalate. That's
25 what I remember.

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1 MR. WHITCOMB: There's no evidence in the
2 record that that occurred. I see it no different than
3 battle of the bands that we had when we were growing
4 up. The rockers didn't go off on one another. That's
5 an argument between us.

6 CHAIRMAN BOHL: It's neither here nor there.

7 ALDERMAN PUENTE: I'm not going to talk
8 about it.

9 CHAIRMAN BOHL: I know that battle of the
10 bands and rapping rap contests are both permissible
11 items on a cabaret license and that neither one of
12 them has been approved or is requested by this license
13 application, as well, too. Neither here nor there, as
14 well.

15 But ultimately an individual may have a
16 tavern with an instrumental music license but not a
17 tavern dance, individuals aren't permitted to dance.
18 Now, it doesn't mean that there aren't times where you
19 will find some patron who would begin an impromptu
20 grabbing a partner and dancing on the floor, but if
21 seen, the tavern should put a stop to it because
22 they're not permitted to allow that. Are there any
23 questions, comments by committee?

24 MR. SCHRIMPF: Mr. Chair.

25 CHAIRMAN BOHL: Mr. Schrimpf.

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1 MR. SCHRIMPF: I would just like to ask
2 Sergeant Ulickey, has the Milwaukee Police Department
3 taken anyone into custody as a result of the armed
4 robbery that took place?

5 SGT. ULICKEY: The information that I
6 received today -- and I will add it may not be
7 conclusive -- indicates that there has been nobody
8 taken into custody.

9 MR. SCHRIMPF: So we don't know who this
10 individual was, and therefore, we don't know if this
11 person was in the premises that night or not?

12 SGT. ULICKEY: That's correct.

13 ALDERMAN PUENTE: Sergeant Ulickey, the
14 victim in this incident, was he in the establishment?

15 SGT. ULICKEY: Based on his statement, yes.

16 ALDERMAN PUENTE: Thank you.

17 CHAIRMAN BOHL: Other questions by
18 committee? Mr. Morton, any closing statements you'd
19 like to make on behalf of Alderman Davis?

20 LEGISLATIVE AIDE: Yes. Alderman Davis, as
21 you all know, could not be here today. We tried to
22 get it rescheduled for a special meeting for the 9th
23 but was unable to do so, I tried to relay his words as
24 passionately as he would.

25 CHAIRMAN BOHL: That would be fairly

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1 difficult to do.

2 ALDERMAN WADE: Take a deep breath.

3 LEGISLATIVE AIDE: It was mentioned by Mr.
4 Conner in regards to giving the applicants an
5 opportunity, and as stated in the meeting on the 29th
6 Alderman Davis is all for opportunity. He's a very
7 fair individual. Ask people. If they know him, they
8 know he is a fair individual. But his main point is
9 we're talking about a place and giving opportunities
10 that, to my knowledge, had a 60-day suspension once
11 before for past transgressions. We're talking about a
12 place that has not applied for rapping on the
13 premises, whether it be in live performance or in
14 music, it's not in there, but yet they had rapping on
15 the premises, and because of this, they had a rapping
16 battle, whatever you want to call it, that night in
17 there, ended up being a shooting that night. So
18 Alderman Davis is all for chances, but there's only so
19 many chances you can give, so many opportunities a
20 person can have before you get to the point you have
21 to make a decision, and Alderman Davis stands by his
22 decision to not allow the license, to keep the license
23 as it is, denied it.

24 Granted, I've heard some great argument in
25 regards to being a black business, and Alderman Davis

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1 is not for shutting down black businesses, but there
2 has to be a point at some time when when you say
3 listen, enough is enough, and there has to be a
4 message sent. Basically, the best I can to display
5 his passion, but really the opportunity has been
6 given, and he feels that they have not met the
7 obligation. They said that certain things wouldn't
8 happen as far as rapping goes, and there ended up
9 being rapping there anyway, and it's not even on the
10 license. There shouldn't be any rapping there at all,
11 and this rapping led to a shooting on the premises.
12 That being said, his opinion is the same, he wants it
13 to remain denied.

14 CHAIRMAN BOHL: Any other questions at this
15 point from committee members?

16 MR. WHITCOMB: Brief reply?

17 CHAIRMAN BOHL: Briefly.

18 MR. WHITCOMB: Two things. It's the cabaret
19 license application which did not indicate that they
20 would have rap music. This was not rap music
21 performed by performers hired by the establish., this
22 was not rap music performed under the cabaret license,
23 so this is rapping, singing back and forth between
24 patrons in the establishment spontaneously, and I take
25 extreme issue with the Alderman's aide or perhaps

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1 speaking for the alderman that this shooting had
2 anything to do with the rapping back and forth inside
3 the licensed establishment. There's absolutely no
4 evidence to that effect whatsoever. Those are my
5 comments, Mr. Chairman.

6 CHAIRMAN BOHL: Thank you. Again, any last
7 questions, comments by committee members? This matter
8 is in committee. Alderman Wade?

9 ALDERMAN WADE: No. I was reaching for the
10 gavel. I thought you was passing the gavel.

11 ALDERMAN BOHL: Is there a motion?

12 ALDERMAN DUDZIK: Mr. Chair, I made the
13 first two motions on this, and I guess I'll make the
14 third one, too, and that is that I would move to deny
15 based on the police report, for me anyway, it weighs
16 heavily that 12 members of the Common Council vote in
17 support of the denial at committee a few weeks ago.

18 MR. SCHRIMPF: Mr. Chairman, just to
19 clarify, not including Item No. 9.

20 ALDERMAN DUDZIK: Not including Item No. 9,
21 yes. I think there was a Beatles song like that.

22 CHAIRMAN BOHL: The motion by Alderman
23 Dudzik is to recommend non-renewal of the licenses for
24 Phoenix Pub and Grill at 6222 West Fond du Lac Avenue,
25 based on matters contained in the police report,

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1 excluding the underage item. Is there any discussion
2 on that motion? Ma'am Clerk, if we can go through a
3 roll call vote.

4 THE CLERK: Alderman Puente.

5 ALDERMAN PUENTE: Aye.

6 THE CLERK: Alderman Wade.

7 ALDERMAN WADE No.

8 THE CLERK: Alderman Dudzik.

9 ALDERMAN DUDZIK: Aye.

10 THE CLERK: Mr. Chair.

11 CHAIRMAN BOHL: No.

12 THE CLERK: Motion fails two to two.

13 CHAIRMAN BOHL: Motion fails on a two/two
14 vote. We are still in committee.

15 VICE-CHAIRMAN WADE: The Chair recognizes
16 5th District Alderman Jim Bohl.

17 ALDERMAN BOHL: Thank you, Mr. Chairman.

18 Mr. Chairman, I did not support the initial motion
19 last time, and I did have concerns relating to the
20 activities, particularly the shooting. I continue to
21 have concerns because whether, as the counsel
22 indicates, this was more of an impromptu rap contest
23 that came about, my strong suspicions are with
24 something that may have transpired here more than just
25 on one occasion, particularly when you have an

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1 individual rap company that is showing up.

2 Needless to say, whether that is the case or
3 not, the premises is not licensed, and that is a
4 particular item in which the City of Milwaukee does
5 regulate and license through its cabaret license of
6 rapping and rap contests. As I indicated earlier, if
7 there is a Class B tavern that does not have a dance
8 license but plays instrumental music and individuals
9 come up and decide they want to kind of dance, whether
10 they're doing so in an impromptu manner or not, the
11 fact is that is the obligation of that licensed
12 premise and the individuals who are part of the
13 management or operation of that to indicate very
14 promptly to those individual patrons that we are not
15 an establishment in which this is allowed.

16 I have some concerns in that in the past we
17 have had items in the police report that have led to
18 the Council taking into consideration a 60-day
19 suspension and that we have a very serious offense
20 here. That being said, I could not support a motion
21 to take the license, simply speaking, because I do not
22 believe that it reached that threshold what we had
23 here. We did not have neighborhood objections come
24 forth either at the last meeting or this one in which
25 anyone came forward and verified other related

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1 concerns, whether it be loud noise, whether it be
2 other type of related problems, cruising, violence, if
3 you will, and those are things that have taken place
4 at other establishments in which the Council has taken
5 very stringent action against the license application.

6 I will not make light of it because I think
7 that this offense was very serious, and I think it's a
8 very serious offense on top of previous problems at
9 this establishment in which the Council has taken
10 considerable sanction against.

11 With that being said, I would make a motion
12 for approval of the Class B tavern license with a 25-
13 day suspension. I would move further, I will
14 acknowledge that up until this time that it was an
15 interim time in which this particular establishment
16 has been shut down during the interim time of 33 days,
17 so I would move approval of the Class B tavern
18 application with a 25-day suspension.

19 I would also at this time move for the
20 nonrenewal of the tavern amusement application. I
21 believe that when we've seen problems at this
22 establishment, they have been related to that
23 particular cabaret establishment. I believe that if
24 the Council or this committee or the Council were to
25 take action against this establishment that it would

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1 be rightfully against the area of the business where
2 the problem has been created, and that is related to
3 the amusement portion of this license. I would
4 believe it would be excessively arbitrary to take
5 action against the permanence of a tavern at this
6 location both for the ability for it to serve as a
7 tavern not only for this establishment but also
8 potentially to cater out to individuals who may be in
9 the adjacent hotel and seeking to have a beverage with
10 whatever food they may cater out to. So that being
11 said, that is my motion, Mr. Chairman

12 VICE-CHAIRMAN WADE: The motion is before
13 us. Are there any comments on the motion?

14 ALDERMAN DUDZIK: Mr. Chair. Perhaps a
15 question of clarification for me. At the next
16 application cycle, will there be notification that the
17 place has been shut down for 33 days, and the 25-day
18 suspension was added to that, or will there be no
19 record of that 33-day shutdown because we didn't
20 technically enforce it?

21 MR. SCHRIMPF: Mr. Chairman, the license
22 expired by operation of law on December the 15th,
23 midnight on December the 15th, so since the license
24 expired, there is currently no alcohol sales that can
25 take place at the premises. And yes, there is a

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1 record of that because the License Division would note
2 the date of the expiration of the present Class B.

3 ALDERMAN DUDZIK: Thank you. Mr. Chair, if
4 I may just make one last comment.

5 VICE-CHAIRMAN WADE: Proceed, sir.

6 ALDERMAN DUDZIK: I'll note that the 33-day
7 shutdown and 25-day suspension with the elimination of
8 the tavern amusement section of the license
9 application is a total of two days short of my
10 original recommendation. So at this point in time, I
11 think I will support this measure, and that's all I'm
12 going to say.

13 VICE-CHAIRMAN WADE: Are there any other
14 comments on the recommendation? Are there any
15 objections? The motion passes four to zero. Thank
16 you.

17 MR. SCHRIMPF: Mr. Whitcomb, the committee
18 is going to be doing findings of fact and conclusions
19 of law again, this time recommending renewal of the
20 Class B license with a 25-day suspension, which would
21 begin on January 18th, 2006 and nonrenewal of the
22 tavern entertainment cabaret license. You will be
23 receiving a copy of those findings. You'll have an
24 opportunity to submit written objections to those
25 findings as well as appear before the Milwaukee Common

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1 Council when it meets on this matter on January 18th,
2 2006 at approximately 9:00 a.m. in the Council
3 Chambers of this building.

4 MR. WHITCOMB: I will accept the findings of
5 fact and conclusions of law at my office address on
6 behalf of the applicant.

7 MR. SCHRIMPF: Thank you.

8 MR. WHITCOMB: Thank you.

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