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CITY OF MILWAUKEE  
COMMON COUNCIL

In the Matter of:

PHOENIX BAR AND GRILL  
6222 West Fond du Lac Avenue

Proceedings held in the above-entitled matter, commencing at 9:30 a.m., December 13th, 2005, in the Common Council Chambers, 200 East Wells Street, Milwaukee, Wisconsin, before the Common Council, reported by Terese M. Schiebenes of Milwaukee Reporters Associated, Inc.

A-P-P-E-A-R-A-N-C-E-S  
MICHAEL WHITCOMB, Attorney-at-Law,  
663 West Wisconsin Avenue Milwaukee, Wisconsin, 53203,  
appeared on behalf of the Applicant.

OFFICE OF THE CITY ATTORNEY, By BRUCE  
SCHRIMPF, 200 East Wells Street Milwaukee,  
Wisconsin, 53202, appeared on behalf of the Common  
Council.

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PROCEEDINGS

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THE CLERK: Recommendation of nonrenewal of the Class B Tavern and Tavern Amusement License of Andrea Chavis, agent for Diamond Food and Beverages, Incorporated, for the premises at 6222 West Fond du Lac Avenue, known as the Phoenix Bar and Grill in the 2nd Aldermanic District. On this item, written exceptions were filed.

(Other proceedings.)

THE CLERK: Counsel and applicant, Andrea Chavis, are present.

PRESIDENT HINES: With Ms. Chavis being present, Alderman Jim Bohl moves to go into the committee of the whole to hear oral argument on behalf of the licensee in opposition to the report and recommendations and the statement presented by the City Attorney. Is there any objection? Hearing and seeing no objections, we are not in the committee of the whole.

Each side shall be limited to five minutes, and the arguments shall be limited to the subject matter of the report and recommendations and the written exceptions. With that being the case, we will hear from the representative of Andrea Chavis. Why don't you come to the podium, identify yourself.

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1 MR. WHITCOMB: Thank you, Mr. President,  
2 members of the Common Council. My name is Michael  
3 Whitcomb, I'm the attorney for the renewal licensee  
4 for the Phoenix Bar and Grill at 6222 West Fond du Lac  
5 Avenue.

6 Initially I'd like to represent to the  
7 Council that my client appeared before the Utilities &  
8 Licenses Committee without counsel, having only seen  
9 the notice for the hearing that particular morning.  
10 Therefore, her case was not as well presented as it  
11 could have been, with fuller explanations regarding  
12 the objections of the police department that were  
13 presented before the committee.

14 At the outset, it is respectfully submitted  
15 that the nonrenewal of all the licenses for this  
16 establishment is far too draconian for the objections  
17 and the testimony that appeared before the committee.  
18 There were no neighborhood objections to the renewal  
19 of the licenses, and the foundation for the nonrenewal  
20 recommendation was strictly from the content of the  
21 police report.

22 Four incidents in that report had not  
23 previously been considered by the Utilities & License  
24 Committee. For the renewal year of 2004, there was no  
25 hearing, there were no objections, the license was

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1 automatically renewed. However, there was an incident  
2 in 2004, and that was an over-capacity incident, for  
3 which a citation was issued and a fine paid.

4 During the last license year, the police  
5 report showed three incidents. One, respectfully  
6 submit, cannot be considered since it was a sale to  
7 minor, it did not occur within 12 months of a similar  
8 violation, therefore, according to State Statute, it  
9 cannot be considered on renewal of the license.

10 The second incident was innocuous at best,  
11 is failure to post the capacity for the establishment,  
12 and what had transpired was that the framed capacity  
13 placard fell from the wall, slid down the wall behind  
14 the bar. That was posted immediately thereafter, a  
15 fine was paid.

16 The third incident reported in the last  
17 license year which caused the committee the greatest  
18 concern was an armed robbery, which occurred off the  
19 premise. It was in the neighborhood of the premise,  
20 but it did not occur on the premise. The only tie-in  
21 with the licensed establishment, based upon a police  
22 report, was that the victim of the armed robbery  
23 indicated that he had been in the licensed premise  
24 earlier that evening. However, there's nothing to  
25 indicate that the perpetrator of the crime was in the

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1 establishment, any conduct within the establishment  
2 caused the incident to occur outside the premises, and  
3 in fact, the licensee, Ms. Chavis, was at the premise  
4 at the time the incident occurred and was unaware that  
5 it had occurred that evening, for she was not even  
6 contacted until the following day concerning the  
7 incident, at which time she indicated to the  
8 authorities that she was unfamiliar with any aspect of  
9 the incident and did not know whether or not, in fact,  
10 the victim of the armed robbery had indeed been in the  
11 premises prior to that time.

12 It is respectfully submitted that these  
13 incidents do not justify nonrenewal of these licenses.  
14 This establishment has been in existence from 1997, a  
15 substantial investment was made in the licensed  
16 premise in constructing a kitchen, a restaurant, and a  
17 tavern, and the licensed premise has had a good run  
18 since 1997, but for an earlier incident which occurred  
19 for which a 60-day suspension was imposed, and that  
20 incident occurred where the entire family of the  
21 owners was in Atlanta for a wedding of their child,  
22 they had rented the premise out to a private party,  
23 who engaged in activity which was clearly contrary to  
24 the ordinances of the City of Milwaukee.

25 Admittedly, the incidents did occur, a

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1 suspension was imposed, and it was proper. However,  
2 it was not attributable to any contact or disregard of  
3 the law by the licensee, as the licensee was at a  
4 family wedding in Atlanta that particular weekend.

5 The local alderman, the new alderman from  
6 the district, from my client's perspective, is  
7 justifiably concerned about the development of Fond du  
8 Lac Avenue at that particular location, is justifiably  
9 concerned about the neighborhood concerns of that  
10 area. However, this hotel is an asset to the  
11 neighborhood. It was cleaned up by the proprietor.  
12 It is now a valid hotel, not a flea bag as it once  
13 was, and the bar and restaurant was an adjunct and an  
14 attraction and also a benefit to the patrons of the  
15 hotel.

16 To address the concerns of the local  
17 alderman, paying much attention to the development of  
18 Fond du Lac Avenue, my client has authorized me to  
19 indicate to the Council that it is willing to withdraw  
20 its cabaret license application renewal, that the  
21 concerns, sporadic as they have been since 1997  
22 concerning patrons at the establishment, it's  
23 more geared towards youthful patrons than patrons of  
24 the hotel using the bar and restaurant as they stay at  
25 the hotel. It was the cabaret license and the live

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1 entertainment that attracted people other than hotel  
2 patrons, and they're willing at this time to withdraw  
3 the renewal application for the cabaret license and  
4 instead request that a tavern dance license be  
5 provided, which would allow them to have live music,  
6 and for those hotel patrons and neighbors that wish to  
7 dance to the music, they may, but they will no longer  
8 have any live entertainment, which admittedly at times  
9 did create concerns at the establishment, not many of  
10 which were brought to the attention of the  
11 authorities, but it is not worth the investment of  
12 time and energy from managing the establishment under  
13 the cabaret because it does not provide a comparable  
14 benefit to the patrons at the hotel.

15 PRESIDENT HINES: One minute, please.

16 MR. WHITCOMB: Thank you, Mr. President.

17 Therefore, it is respectfully submitted to this  
18 honorable Council, notwithstanding the recommendation  
19 of the Utilities & Licenses Committee, recommend the  
20 renewal of the Class B Tavern License accept the  
21 withdrawal of the cabaret renewal application, and  
22 grant the request made at this time for the tavern  
23 dance license. And if that's not procedurally proper,  
24 what my client will do thereafter is file a new  
25 application for a tavern dance license, which will be

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1 separately considered by the Utilities & Licenses  
2 Committee and this Council.

3 What's most important is to maintain the  
4 ability to sell alcoholic beverages at the  
5 establishment in conjunction with the hotel,  
6 especially over this holiday season, because my client  
7 has numerous parties booked at the hotel, and it is  
8 known as one of the few hotels minority-owned in the  
9 City of Milwaukee that does provide a benefit to  
10 minority patrons at the hotel and at the banquet  
11 facilities at the establishment.

12 Thank you, Mr. President, thank you, members  
13 of the Council. Respectfully request that this  
14 Council move to amend the recommendations of the  
15 committee, accept the withdrawal of the cabaret  
16 license, and vote to renew the Class B Tavern License.  
17 Thank you.

18 PRESIDENT HINES: Thank you, Attorney  
19 Whitcomb. Why don't you stay here, please. Are  
20 there some questions? The Chair recognizes Alderman  
21 Joe Davis.

22 ALDERMAN DAVIS: Thank you, Mr. Whitcomb. I  
23 appreciate your overview of the incident. A couple  
24 questions that I have for you. Are you referring to a  
25 police report that was submitted with the application



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1 that was in summary when you stated that a certain  
2 incident that occurred on January 22nd, 2005 did not  
3 occur on the premises, the establishment, which is  
4 6222 West Fond du Lac Avenue?

5 MR. WHITCOMB: I'm referring to the incident  
6 report that the Milwaukee Police Department prepared  
7 that was submitted together with the notice of the  
8 hearing before the Utilities & License Committee. Did  
9 I misspeak?

10 ALDERMAN DAVIS: Yes. Are you familiar with  
11 the entire police report that gives the entire  
12 instance as far as the interview of certain -- not  
13 only the victim but also a witness who witnessed it,  
14 who was actually involved in the incident that was at  
15 6222 West Fond du Lac Avenue?

16 MR. WHITCOMB: No. My client was not  
17 prepared notice of that particular report and did not  
18 address it, as she was unaware of it and was unaware  
19 of the facts of the particular incident.

20 ALDERMAN DAVIS: I want to bring to your  
21 attention that there is an entire police report that  
22 the police department interviewed witnesses that does  
23 place the incident on the premises of 6222 West Fond  
24 du Lac Avenue, which is the Phoenix Bar and Grill and  
25 the Diamond Inn, and it specifically says, if I may

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1 read through --

2 PRESIDENT HINES: No. Just questions.  
3 You'll get a chance to speak to that issue.

4 MR. WHITCOMB: I would object to that,  
5 Alderman, on the grounds of due process, since my  
6 client did not receive notice of any statements  
7 contained in that report and is not in a position to  
8 respond to them either here or at the Utilities &  
9 License Committee. The only notice we received  
10 concerning that incident was contained in the Incident  
11 Report by the Milwaukee Police Department, which was  
12 submitted along with a notice for the hearing.

13 ALDERMAN DAVIS: And it is clear -- Well,  
14 let me ask you this. Does your client understand that  
15 there are not supposed to be any rap music or hip-hop  
16 music at that establishment, based upon the  
17 application in which they submitted to the Utilities &  
18 Licensing Division of the City of Milwaukee?

19 MR. WHITCOMB: It's my understanding that  
20 the application submitted for the cabaret license,  
21 which is licensed for the playing of live music,  
22 indicated that the live music would not be rap music.  
23 It's also my understanding that on the night of the  
24 incident that there was rap performances made by  
25 patrons of the establishment, but it was not rap music

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1 performed by live entertainers which was authorized by  
2 the cabaret license.

3 The submission of the cabaret license  
4 restricting the type of music, as I understand it,  
5 restricts the type of music by live performers. Or on  
6 the night of the incident, the rap was not by live  
7 performers hired by the establishment but by patrons  
8 doing rap music along with, as I understand it, the  
9 juke box.

10 ALDERMAN DAVIS: Are you aware that your  
11 client admitted that there was a private party held  
12 that night that had to do with G Mafia Records?

13 MR. WHITCOMB: I reviewed the tape of the  
14 hearing before the Utilities & License Committee, and  
15 that's not my recollection of the testimony of the  
16 client. My recollection was there were  
17 representatives of a music company in the  
18 establishment, but I did not understand that it was a  
19 private party. It was just a happenstance that they  
20 were there at the time, not that they had rented out  
21 any portion of the premises for a private party.

22 ALDERMAN DAVIS: As you review that  
23 testimony, are you aware that I brought to your  
24 client's attention and asked your client specifically  
25 was there any event held that night of the incident,

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1 and she indicated yes?

2 MR. WHITCOMB: I'd have to re-review that.  
3 I don't have direct recollection of that at this time,  
4 Alderman.

5 ALDERMAN DAVIS: Thank you, Mr. President.

6 PRESIDENT HINES: Are there any additional  
7 questions of Attorney Whitcomb? Thank you.

8 MR. WHITCOMB: Merry Christmas to you all.  
9 Thank you.

10 PRESIDENT HINES: We will now hear from the  
11 City Attorney's Office.

12 MR. SCHRIMPF: Thank you, Mr. President,  
13 members. Bruce Schrimpf from the City Attorney's  
14 Office.

15 Mr. Whitcomb and I do not often agree, but  
16 there are two points that I can agree with him on.  
17 First of all, we have to confine ourselves to the  
18 record that was made before the Utilities & Licenses  
19 Committee, we cannot go off that record, we cannot  
20 introduce other documents at this point.

21 The other thing I agree with him on is  
22 regarding the underage sale of alcohol. It is  
23 absolutely true you do need two within a year of the  
24 first, and you need convictions on them in order to  
25 consider them. The reason why they are in the

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1 Findings of Fact is because that is one of the  
2 mechanisms by which we keep track of whether or not  
3 there's two in one year or two within a year from the  
4 date of the first.

5 Respecting the Findings of Fact and the  
6 police report, it is certainly true that this  
7 organization had a 60-day suspension at the 2003-2004  
8 renewal. The 2004 renewal did not pose a major  
9 problem except that there was the over-capacity, and  
10 then, of course, there were the incidents that  
11 occurred in 2005, one of which was the armed robbery.  
12 The police indicated that this occurred as the  
13 individual was leaving the Phoenix Bar and Grill, he  
14 had been a patron at the Bar and Grill, and of course,  
15 he actually had been shot. Fortunately, he did not  
16 die, but he had been shot, and there was an attempt to  
17 take -- or I guess they actually did take his wallet  
18 out of his back pocket.

19 This continues a long, long history of  
20 problems at this location, which, again, the Council  
21 certainly can consider the entire history of the  
22 organization. The mere fact that there was a 60-day  
23 suspension two years ago does not really inure to the  
24 benefit of this particular licensee. However, whether  
25 or not you impose a suspension and the length of that

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1 suspension is, again, repose to your sound discretion,  
2 keeping in mind that there has been a 60-day  
3 suspension imposed at this point. The minimum  
4 suspension is 10 days, the maximum suspension is 90  
5 days.

6 With respect to the request to withdraw the  
7 cabaret license, I quickly checked 90-35-11 of the  
8 Code of Ordinances, and that particular piece of this  
9 has to go back to the Utilities & Licenses Committee  
10 for consideration. Beyond that, I'll be happy to  
11 answer any questions that you may have.

12 PRESIDENT HINES: Thank you, Attorney  
13 Schrimpf. Are there any questions of Attorney  
14 Schrimpf?

15 MR. SCHRIMPF: Thank you.

16 PRESIDENT HINES: There being no additional  
17 persons here to contest, the Chair recognizes Alderman  
18 Willie Wade. Let me first go into committee of the  
19 whole. I apologize. Alderman Witkowiak moves that  
20 the committee now rises. Are there any motions  
21 relative to the following matters? The chair  
22 recognizes Alderman Willie Wade.

23 ALDERMAN WADE: Thank you, Mr. President.  
24 Not being present at the beginning of this hearing, I  
25 want to make sure that it is reported that I did read

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1 it, so I'm able to vote in this segment.

2 PRESIDENT HINES: You were not available --  
3 We marked you as excused during that session, and not  
4 being part of any part of it negates you the  
5 opportunity to vote or taking action.

6 ALDERMAN WADE: Thank you.

7 PRESIDENT HINES: Are there any other  
8 motions relative to the following matters? That being  
9 the case, there is no further discussion, I request a  
10 vote of those members present to approve the  
11 recommendations of the Licenses Committee as contained  
12 in File No. 050811. Will the City Clerk please call  
13 the roll.

14 THE CLERK: Alderman Hamilton.

15 ALDERMAN HAMILTON: Aye.

16 THE CLERK: Alderman Davis.

17 ALDERMAN DAVIS: Aye.

18 THE CLERK: Alderman D'Amato.

19 ALDERMAN D'AMATO: Aye.

20 THE CLERK: Alderman Bauman.

21 ALDERMAN BAUMAN: Aye.

22 THE CLERK: Alderman Bohl.

23 ALDERMAN BOHL: No.

24 THE CLERK: Alderman McGee.

25 ALDERMAN MCGEE: Aye.

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1 THE CLERK: Alderman Donovan.  
2 ALDERMAN DONOVAN: Aye.  
3 THE CLERK: Alderman Puente.  
4 ALDERMAN PUENTE: Aye.  
5 THE CLERK: Alderman Murphy.  
6 ALDERMAN MURPHY: Aye.  
7 THE CLERK: Alderman Dudzik.  
8 ALDERMAN DUDZIK: Aye.  
9 THE CLERK: Alderman Witkowski.  
10 ALDERMAN WITKOWSKI: Aye.  
11 THE CLERK: Alderman Zielinski.  
12 ALDERMAN ZIELINSKI: Aye.  
13 THE CLERK: Mr. President.  
14 PRESIDENT HINES: Aye.  
15 THE CLERK: 12 ayes, 1 no, 2 excused.  
16 PRESIDENT HINES: 12 ayes, 1 no, 2 excused.  
17 The file is adopted.  
18 Alderman Bohl now moves for adoption of the  
19 recommendation of the Licenses Committee. Will  
20 the City Clerk please call the roll.  
21 THE CLERK: Alderman Hamilton.  
22 ALDERMAN HAMILTON: Aye.  
23 THE CLERK: Alderman Davis.  
24 ALDERMAN DAVIS: Aye.  
25 THE CLERK: Alderman D'Amato.



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1 ALDERMAN D'AMATO: Aye.  
2 THE CLERK: Alderman Bauman.  
3 ALDERMAN BAUMAN: Aye.  
4 THE CLERK: Alderman Bohl.  
5 ALDERMAN BOHL: Aye.  
6 THE CLERK: Alderman McGee.  
7 ALDERMAN MCGEE: Aye.  
8 THE CLERK: Alderman Wade.  
9 ALDERMAN WADE: Aye.  
10 THE CLERK: Alderman Donovan.  
11 ALDERMAN DONOVAN: Aye.  
12 THE CLERK: Alderman Puente.  
13 ALDERMAN PUENTE: Aye.  
14 THE CLERK: Alderman Murphy.  
15 ALDERMAN MURPHY: Aye.  
16 THE CLERK: Alderman Dudzik.  
17 ALDERMAN DUDZIK: Aye.  
18 THE CLERK: Alderman Witkowski.  
19 ALDERMAN Witkowski: Aye.  
20 THE CLERK: Alderman Zielinski.  
21 ALDERMAN ZIELINSKI: Aye.  
22 THE CLERK: Mr. President.  
23 PRESIDENT HINES: Aye.  
24 THE CLERK 14 ayes, 1 excused.  
25 PRESIDENT HINES: 14 ayes, 1 excused. The

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1 committee report is adopted.

2 (Proceedings concluded at 9:45 a.m.)

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1 STATE OF WISCONSIN )  
2 )  
3 MILWAUKEE COUNTY )  
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5 I, TERESE M. SCHIEBENES, of Milwaukee  
6 Reporters Associated, Inc., 5120 West Blue Mound Road,  
7 Milwaukee, Wisconsin 53208, certify that the  
8 foregoing proceedings is a full and complete  
9 transcript of my stenographic notes taken in the  
10 foregoing proceedings.

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TERESE M. SCHIEBENES  
Certified Shorthand Reporter

Dated this            day of    , 2005.

