

**City of Milwaukee Licenses Committee**

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**Hilton Garden Inn and Suites**

**Petitioner,**

v.

**Ladybug Club,**

**Respondent.**

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**MOTION FOR THE DISQUALIFICATION OF ALDERMEN ROBERT  
BAUMAN PARTICIPATING AS A DECISION MAKER ON THE COMMON  
COUNCIL AS TO THE LADYBUG CLUB LICENSING**

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**I. INTRODUCTION**

This matter is scheduled to come before the City of Milwaukee Licenses Committee on October 18, 2013, relative to a Complaint filed by the Hilton Garden for revocation of the Ladybug Club's license, pursuant to Wis. Stat. §125.12. Subsequent thereto, the matter will come before the Common Council for a final decision as to whether or not to grant the Hilton Garden's request to revoke the license of the Ladybug Club. Based upon considerations of due process, the Ladybug Club requests that Alderman Bauman be disqualified from participating in any vote of the Common Council concerning whether or not to revoke the license of the Ladybug Club based upon the Hilton Garden's Complaint.

**II. THE LADYBUG CLUB HAS A SUBSTANTIAL PROPERTY  
INTEREST IN ITS LICENSE AND THUS IS ENTITLED TO DUE PROCESS IN  
ANY ATTEMPT TO REVOKE THAT PROPERTY INTEREST.**

The Hilton Garden attempts to have the Ladybug Club's liquor license revoked pursuant to Wis. Stat. §125.12. Review of any decision by the Common Council is

through certiorari to the Circuit Court. Wis. Stat. §125.12(2)(d); *Nowell v. City of Wausau*, 2012 WI App 100, ¶ 7, 344 Wis. 2d 269, 273, 823 N.W.2d 373, 375 *review granted*, 2013 WI 40, 347 Wis. 2d 111, 829 N.W.2d 750. “Certiorari is an extraordinary remedy that tests the validity of a judicial or quasi-judicial decision.” *Id.* Thus, by statute, the act of the Common Council to revoke such a license is a judicial or quasi-judicial act.

Moreover, “an owner has a ‘substantial property interest in retention of his liquor license,’ since revocation can cause the loss of both income and investments in the physical property.” *Id.*, at ¶ 12.

Yet tavern owners have the most to lose; “[t]he [owners’] stake ... is both their occupations and their investments[,] for denial of the renewal of a liquor license bars them not only from selling liquor but substantially impairs the value of their taverns.” *Misurelli v. City of Racine*, 346 F.Supp. 43, 48 (E.D.Wis.1972), *vacated*, *City of Kenosha v. Bruno*, 412 U.S. 507, 93 S.Ct. 2222, 37 L.Ed.2d 109 (1973).

*Id.*

With so much at stake for the tavern owner, due process in the determination of whether or not to strip a tavern owner of this property interest is clearly crucial. For this reason, the indications that Alderman Bauman has prejudged this matter, before any evidence has been heard, must be taken seriously; and Alderman Bauman should be disqualified from participating in any vote relative to the licensing of the Ladybug Club, in order to protect the Ladybug Club’s due process rights over its property interest.

### **III. REQUEST FOR RECUSAL ON DUE PROCESS CONSIDERATIONS**

“It is, of course, undisputable that a minimal rudiment of due process is a fair and impartial decisionmaker.” *Guthrie v. Wisconsin Employment Relations Com’n*, 111 Wis.2d 447, 454, 331 N.W.2d 331 (1983). “If the decisionmaker is not fair or is not impartial, due process is violated.” *Id.* This “rule applies to administrative agencies which adjudicate as well as to courts.” *Id.*, quoting, *Withrow v. Larkin*, 421 U.S. 35, 46, 95 S.Ct. 1456, 1463, 43 L.Ed.2d 712.

“There can also be a denial of due process when the **risk of bias is impermissibly high**. *Withrow* pointed out that not only is a biased decisionmaker unacceptable, but **our system of law has always endeavored to prevent the probability of unfairness**. *Id.* at 454. Thus, there need not be bias in fact but only “a situation in which the risk of bias or partiality on the part of the decisionmaker is too high to be constitutionally tolerable.” *Id.* at 458.

The facts in this case demonstrate not only that the risk of bias is too high to be constitutionally tolerable, but they go even further to reveal actual bias on the part of Alderman Bauman. As a result, the Ladybug Club is respectfully requesting that Alderman Bauman be disqualified from participating in any vote of the Common Council in the above matter, relative to any decision whether to revoke the Labdybug Club’s license.

On Monday, October 7, 2013, Alderman Bauman hosted a neighborhood meeting held by the Downtown Neighborhood Association (hereinafter “DNA”) at the Marriot Hotel. Counsel for the Garden Hotel and a representative of the Garden Hotel, were invited not only to attend the meeting, but to give a presentation at the meeting about why

they were seeking revocation of the Ladybug Club's license. Neither counsel for the Ladybug Club nor the owner of the Ladybug Club were invited to attend the neighborhood association meeting.

Alderman Bauman has previously demonstrated his personal desire to have the Ladybug Club's license revoked, at the renewal hearing approximately one year ago. During that hearing, Alderman Bauman advocated for the non-renewal of the Ladybug Club's license, despite there being no complaint by the Milwaukee Police Department relative to any criminal or nuisance activity occurring at the Club, and no other evidence of any criminal or nuisance behavior at the establishment. Specifically, when the Licenses Committee voted to renew the Club's license, Alderman Bauman stated that it was not a problem, that the Hilton Garden would get the Club's license revoked the following year. (See recording of Licenses Committee meeting notes dated 11/12/2012). There is no doubt, based upon this statement, that Alderman Bauman has already made up his mind whether the Ladybug Club should have its license revoked.

Alderman Bauman's participation in the neighborhood association meeting, his failure to invite the Ladybug Club to attend this meeting, and his statements at the previous hearing on this issue, all demonstrate that Alderman Bauman has prejudged this matter and determined, without any consideration to the evidence presented at a hearing, that the Ladybug Club's license should be revoked. This predetermination of the matter will violate the Ladybug Club's due process rights relative to preserving its property interest in its license to operate its business. As a result, Alderman Bauman should be disqualified from participating as a decision maker in the vote of the Common Council as to whether or not to revoke the Ladybug Club's license. Case law is clear, where there is

a high chance of impermissible bias, the decision maker must be removed in order to preserve the due process afforded the property owner. *Guthrie* at 454. Failure to disqualify Alderman Bauman from this decision will result in the denial of the due process right to the Ladybug Club and render any decision of the Common Council void.

This circumstances in this matter are similar to that in the case of *Marris v. City of Cedarburg*, 176 Wis.2d 14, 498 N.W.2d 842 (1993). In the *Marris* case, the Wisconsin Supreme Court held that the prior involvement of a zoning board member rendered him “impermissibly bias” and he should have been disqualified from participating in the decision of the zoning board on that matter. The *Marris* Court determined that because the board member had prejudged the matter, thus creating an impermissibly high risk of bias, his refusal to recuse himself deprived the property owner of a fair hearing, and thus due process. *Marris*, 176 Wis.2d at 19.

The consideration of a zoning board relative to land use is similar to that of the Common Council on licensing matters. Both directly affect the owner’s ability to use the property in the manner in which the owner intended. Recognizing that the decision regarding zoning matters were ones of local concern and particularly subject to biases, the Supreme Court noted that it was important to ensure that due process was afforded to the property owner.

In determining whether *Marris* was afforded due process and fair play, we recognize that zoning decisions implicate important private and public interests; they significantly affect individual property ownership rights as well as community interests in the use and enjoyment of land. Furthermore, **zoning decisions are especially vulnerable to problems of bias and conflicts of interest because of the localized nature of the decisions**, the fact that members of zoning boards are drawn from the immediate geographical area, and the adjudicative, legislative and

political nature of the zoning process. **Since biases may distort judgment, impartial decision-makers are needed to ensure both sound fact-finding and rational decision-making as well as to ensure public confidence in the decision-making process.**

*Id.*, at 25-26. (emphasis added)

The *Marris* Court further emphasized that a Board making a determination relative to a specific piece of property that affects the activities of that property owner, must first engage in fact-finding before rendering any judgment or decision based upon those facts. Where a Board member prejudices the facts, then the property owner's rights to due process is violated. *Id.*, at 26.

The zoning decision in this case requires that the Board examine a specific piece of land and the activities of a particular property owner. It must engage in fact-finding and then make a decision based on the application of those facts to the ordinance. In this case, where established criteria direct the Board's fact-finding and decision-making, *Marris* should expect that a decision will be made on the basis of the facts and the law. **If a Board member prejudices the facts or the application of the law, then *Marris's* right to an impartial decision-maker is violated.**

*Id.*, at 26. (emphasis added)

“Determining whether a board member has prejudged a matter requires an examination of the facts of the individual case.” *Id.*, at 26. “A clear statement ‘suggesting that a decision has already been reached, or prejudged, should suffice to invalidate a decision.’” *Id.*, at 26. In the *Marris* case, the Board member at issue had previously referred to the property owner's position as “a ‘loopole’ in need of ‘closing.’” *Id.*, at 27. The Board member had further stated to other Board members and the

assistant city attorney that they “should try to ‘get her [Marris] on the Leona Helmsley rule.” *Id.*, at 27. The property owner contended that these statements, among others, demonstrated that the Board member had prejudged her credibility. The Court held that the Board member’s refusal to recuse himself denied the property owner the right to a fair hearing, and thus due process. *Id.*, at 28. The Supreme Court held that the Board member’s comments about the property owner “created a situation in which the risk of bias was impermissibly high.” *Id.*, at 29. The Supreme Court reasoned that “these statements overcome the presumption of honesty and integrity that would ordinarily be applied to this case.” *Id.*, at 29-30, *citing, Guthrie v. WERC*, 111 Wis.2d at 455, *State ex. rel. Northwestern Dev. Corp. v. Gehrz*, 230 Wis. 412, 421-422, 283 N.W. 827 (1939).

The statements made by Alderman Bauman at the 2012 hearing that the Hilton Garden would get the Ladybug Club shut down the next year, are similar to the statements made by the Board member in the *Marris* case. The statement demonstrates the Alderman’s frame of mind in that he believes the Ladybug Club should be shut down. Thus he has prejudged the situation before a hearing on the full and true fact has ever been held. The fact that the Alderman has already made his decision in this matter is further demonstrated by the fact that he invited the Hilton Garden to speak at the neighborhood meeting, but failed to invite the owner or counsel of the Ladybug Club to attend, not to mention to speak or have its side of the story heard.

The comparison to the *Marris* case demonstrates the actual bias in fact which is clearly present in this case by Alderman Bauman. This standard however, is more than the Ladybug Club needs to demonstrate. As stated in *Guthrie*, only a **risk of bias** too high to be constitutionally permitted, needs to be demonstrated in order for due process

rights of the Ladybug Club to be violated. There simply is no doubt that an impermissibly high risk of bias has been demonstrated by Alderman Bauman this matter. Therefore, he should be disqualified from participating in any vote on this issue.

The law is clear. Because Alderman Bauman has prejudged this case, he must be disqualified from participating as a decision maker on any vote relative to whether the license of the Ladybug Club should be revoked. Failure to disqualify Alderman Bauman in this case will deprive the Ladybug Club its due process rights.

### **III. CONCLUSION**

In light of the clear and apparent facts that Alderman Bauman has prejudged the facts of this case, the law requires that he be disqualified from participating as a decision maker in this case. Failure to disqualify Alderman Bauman, given his clear bias would violate the Ladybug Club's due process rights. Moreover, while there is bias in fact present in this situation, the standard is not even this strict. The bias only need be a risk of bias too high to be constitutionally permissible.

Therefore, the Ladybug Club respectfully requests that Alderman Bauman be disqualified from participating in any vote relative to the licensing or revocation of any such license of the Ladybug Club.



Dated this 17<sup>th</sup> day of October, 2013.

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