



JAMES N. WITKOWIAK
ALDERMAN, 12TH DISTRICT

October 13, 2005

To the Honorable, the Common Council

Dear Members:

Re: Common Council File 050541

Attached are written objections to the recommendation of denial of the request by Erick Uecke for a permanent extension of the Class "B" Tavern premises to include extension of premises 12' on the north side of the current premises, reconfiguring the bar, kitchen and restroom areas and providing handicapped access for the premises at 2496 S. Wentworth Ave. ("Cactus Club") in the 14th Aldermanic District.

This matter will be heard by the full Council at its October 18, 2005 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached objections.

Respectfully,

A handwritten signature in black ink that reads "JAMES N. WITKOWIAK". The signature is written in a cursive style and is enclosed within a hand-drawn circle.

James N. Witkowiak, Chair
Licenses Committee

cc: All Council Members
City Attorney's Office
Common Council/City Clerk -- License Division
CCF 050541

LAW OFFICES OF
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October 12, 2005

The Honorable Common Council
of the City of Milwaukee
Room 205, City Hall
200 E. Wells Street
Milwaukee, WI 53202

Re: Alteration of Class "B" Tavern Premise
Property Owner: Eric J. Uecke
Trade Name: Cactus Club
Location: 2496 S. Wentworth Avenue

CITY OF MILWAUKEE
2005 OCT 13 PM 2:20
RONALD D. LEONHARDT
CITY CLERK

Honorable Members of the Common Council:

Please be advised that this office represents the above-referenced property owner (hereinafter "Uecke") who seeks remodeling building permits (hereinafter "Permits") from the Department of Neighborhood Services (hereinafter "DNS") to renovate the first floor and the exterior of his property located at 2496 S. Wentworth Avenue (hereinafter "Property"). The request was made pursuant to Milwaukee Code of Ordinances (MCO) § 90-13

The first hearing on the Permits before the Utilities and Licenses Committee (hereafter "Committee") on was conducted on September 13, 2005. The hearing was noticed to commence at 3:00 p.m. However, it did not commence until 5:30 p.m. The hearing ended at 9:40 p.m. with 42 witnesses testifying, including Uecke and the local alderman, with 19 expressing reservations or objections, and 23 expressing support of the Permits. Testimony from the opposition was not restricted to the merits of the requested Permits, and it was exclusively related to the licensed activity at the Property, **as is**, without any consideration how the building improvements authorized by the Permits would ameliorate their concerns. It was only the supporters of the Permits who stressed the necessity and desire to modernize this nearly 100-year old Property that would essentially eliminate noise, loitering and miscreant patronage.

The Committee was split two-to-two on the first vote. Thereafter, an alderman in support of approving the Permits changed his vote in order to resolve the matter at Committee that evening for subsequent consideration by your Honorable Body. On September 27, 2005, your Honorable Body returned this matter to the Committee. On October 4, 2005, the Committee accepted new testimony regarding the history of MCO § 90-13, its interpretation and previous application, and the case of *Alberti v. City of Whitewater*, 109 Wis. 2d 592 (Ct. App. 1982)(hereinafter "*Alberti Case*") submitted by the local alderman for the first time without notice. The Committee voted four-to-one to deny the Permits.

On September 21, 2005, Uecke submitted written objections to the first Report of the Committee, and Uecke incorporates those objections herein by this reference. Therefore, Uecke only will address herein the Committee's reliance on the *Alberti Case* as set forth in the second Report of the Committee dated October 7, 2005.

Uecke requests that his written objections be considered at the Common Council meeting of Tuesday, October 18, 2005, at which time the Committee's decision denying the Permits will be appealed.

The Alberti Case

At the outset it must be noted that the *Alberti Case* is not a decision of the Supreme Court of Wisconsin as represented in the latest Report of the Committee. It is a decision of the Court of Appeals, a lower appellate court, and from a Court of Appeals district that does not include the City of Milwaukee. The decision is not binding upon the Court of Appeals, District I, which includes the City of Milwaukee.

Factually, the *Alberti Case* is clearly distinguishable from Uecke's case. In the *Alberti Case*, the licensee was licensed to sell alcohol beverages in a licensed premise area described as "**18' x 113' on the first floor**" at **145 West Main.**" The licensee desired to expand his tavern to the property next door at 143 West Main Street. The Court of Appeals treated the licensee's request to add 143 West Main Street to his license to be in effect a transfer of the license to 143 West Main Street to which the licensee had no absolute right "since a common council has discretion to act on a request for transfer."

The Court of Appeals in the *Alberti Case* concluded by stating:

To alter the express terms on which a beer and liquor license was granted, the licensee must return to the licensing authority for its approval.

In modernizing his licensed premises, Uecke is not altering the “express terms” on which his license was granted. Uecke is licensed for the “First Floor” of 2496 S. Wentworth Avenue by the “express terms” in his approved license application. Uecke’s proposed improvements are for the first floor of 2496 S. Wentworth Avenue. He is not expanding the licensed premise to the property next door, or beyond the first floor. It is submitted respectfully that the Committee Report’s reliance on the *Alberti Case* is misplaced totally, and the Committee’s interpretation of MCO § 90-13 in this case is not consistent with state law.

Uecke has a right to improve his Property. He is not expanding his licensed premise. He is licensed on the first floor of his Property. He is but renovating the first floor of his Property all according to modern building codes. MCO § 90-13 does not apply. To deny Mr. Uecke his right to improve his property under these circumstances would not only be totally inequitable but unconstitutional as well. It is submitted respectfully that you Honorable Body reverse the Committee, and direct the proper DNS officials to process Mr. Uecke’s Permit requests forthwith.

Sincerely,



Michael A.I. Whitcomb

c: Mr. Eric J. Uecke