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Circuit Court Judge, Br. 14
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Re: Irish Rec Room v. City of Milwaukee, 13 CV 468

Counsel:

This is a de novo review of the City of Milwaukee's determination not to renew the Tavern and Public Entertainment License of the Irish Rec Room (IRR), fka Whiskey River Saloon. The de novo review is pursuant to Nowell v. City of Wausau, 2012 WI App. 100. For the reasons stated herein, the non-renewal decision of the Milwaukee Common Council is reversed as it is unwarranted based upon the record before this court.

In the renewal hearing before the Common Council Licenses Committee, the evidence established three independent bases under state statute and related municipal ordinances to warrant non-renewal. Wisconsin Statute sec. 125.12 and MCO 90-21 and 90-4-2-b-2. There were two municipal ordinance violations for which forfeitures were imposed on the licensee of IRR. One was for violations of the alcohol beverage licensing provisions of the Wisconsin Statutes and related municipal ordinances, i.e. consumption from bottle on Class B premises.[1] The second was for Disorderly Premises. The violations occurred within several hours of each other in the late evening hours of April 17 and early morning hours of April 18, 2012. Notably, both the record before the council and before this court

[1] The Milwaukee Common Council's Licenses Committee made findings of fact that the violation was for "underage consumption of alcohol." This is not born out by the records of the Milwaukee Municipal Court. Ex. 1, Municipal Court Rec. for Case # 2059865.

establish these were the only violations of law which have occurred on these licensed premises or involving principals of IRR since initial licensing.

The second basis for nonrenewal was deviation from the plan of operation. MCO 90-11-2. The main concern expressed supporting this finding was IRR's failure to maintain a daily lunch menu and operation as indicated in the plan of operation set forth in the original licensing application. Alderman Bauman, in particular, noted the detrimental impact that deviation had on the economic vitality of the neighborhood and its businesses.

Finally, neighborhood problems formed the basis of the nonrenewal. MCO 90-11-2-c. Various principals of nearby establishments and involved citizens testified that the IRR had wholly ineffective management; was repeatedly allowing the use of its premises by promoters whose entertainment activities attracted unruly, boisterous and loitering crowds with little attempt being made to control those activities; all to the substantial detriment of the surrounding neighborhood.

Were those same violations---continuing and similar in nature---established on this record, in all probability, I would sustain the determination of the Common Council. However, they are not.

With respect to the neighborhood problems and objections, all the individuals who appeared in the proceedings before this court (and who had appeared in front of the Licenses Committee to support nonrenewal) testified that they now support renewal of the licenses for IRR. Their change of position relates to the change of management that has occurred at IRR---with Mr. Vecitis becoming the principal manager and part investor. Coinciding with this change, according to the testimony of those witnesses, has been the active efforts of management to cancel previously authorized promotions and a pledge by Mr. Shemitis and Mr. Vecitis not to allow such activities in the future. It is now clear that these witnesses presently view the business activities of IRR as contributing to the economic vitality and safety of the neighborhood despite the history of past failures in that regard.

Some of those witnesses expressed concern that these efforts will not endure. I certainly appreciate those concerns based upon that history. It is quite notable that Mr. Shemitis has previously specifically promised not to use outside promoters prior to the initial issuance of the license in issue. Ex. 1, Bate stamp pp. 58-59.[2] However, given the investment of and demonstrated managerial competence of Mr. Vecitis in the bar/restaurant field, I find the commitments in that regard to be credible.

The fact that the managerial deficiencies and the related problems have been rectified does not render them irrelevant. However, the fact that they have been effectively rectified and that the previously objecting neighbors now support renewal establishes that there are presently no "[n]eighborhood problems due to management." MCO 90-11-2-c-1-d.

The de novo record certainly establishes a continuing deviation from the original plan of operation in the failure to maintain a daily lunch menu. As noted, this was a particular concern of

[2] Mr. Shemitis' testimonial response is to the effect that he did not know that his managers were authorizing this activity. This only suggests that the level of managerial oversight promised in the same document and that lies at the core of the previous neighborhood complaints and ordinance violations was highly deficient.

Alderman Bauman as lunch time patronage was viewed as significantly contributing to the vitality and economic health of the neighborhood. However, the evidentiary record here establishes that other entities in the immediate area have deviated from similar plans of operation because daily lunch business was inadequate to support those operations. Ms. Callies, of Westtown Association, specifically observed that the neighborhood does not have the concentration of businesses and employees (which, she noted, the areas east of the river do have) to support daily lunch menus at a large number of businesses.

Hence, the de novo record here establishes two related ordinance violations (occurring within hours of each other); a history of neighborhood problems due to managerial deficiencies---but no presently existing neighborhood problems and the full support of renewal from the previously objecting neighbors; and a deviation from the plan of operation compelled (both in IRR's circumstance and in other nearby entities circumstances) by economic realities. Given that substantial change in the nature of the established grounds which could warrant nonrenewal, the pivotal issue becomes whether nonrenewal is warranted.

It is conceded on this record that numerous licensed premises in the City with far more extensive histories of criminal/ordinance violations have had renewal applications granted. But for the neighborhood objections, IRR's violations would appear to have warranted renewal without hearing and the warning letter process authorized under MCO 90-11-1-c.

The deviation from the plan of operation was determined by the Council to be a significant concern relating to the economic vitality of the neighborhood. I owe deference to that determination as the Council is far better situated than I to make that assessment. However, the evidence before me credibly suggests that nonrenewal is highly likely to result in the facility being vacant for some appreciable period of time, perhaps a very significant period, which is unquestionably far more detrimental to the welfare and economic vitality of the neighborhood. This consideration is perhaps due greater weight given the "pre-foreclosure" status of the building itself (IRR is a lessee).

Finally, as repeatedly noted, while past neighborhood problems due to managerial deficiencies were established, they have all been effectively remediated due to active and aggressive efforts to engage a competent manager and resolve the issues. This has resulted in all previously objecting neighbors to testify in support of renewal.

On this record, I do not believe that any reasonable argument can be made that nonrenewal is an appropriate sanction. The Nowell court took appropriate note of the significant economic interests implicated in licensing decisions and the evidence before me bears that out. Nowell, at par. 12. In addition, with the neighborhood problems rectified and the neighborhood now supportive of renewal, nonrenewal is directly contrary to the economic interests that the City seeks to promote.

Finally, I agree with Mr. Stevens that the applicable statute, as recently interpreted by the Nowell court, is quite unclear as to whether judicial review extends to imposition of an appropriate sanction upon a court's determination that the sanction was unwarranted or inappropriate or is limited to a remand to the Council. Nowell recognizes that liquor license issues are matters of local concern

involving the exercise of the city's police power. Id., par. 11. The Council is far better situated than I to determine the propriety and proportionality of any sanction imposed. However, the review power extends to all licensing decisions---granting, denial, suspension---and the Nowell court opined that a likely purpose of the de novo review process was to provide a "rapid and politically detached" review process. Id., par. 12. Remand, with the potential of further review, would hardly be conducive to rapid or timely final resolution of licensing disputes. To whatever extent detachment was necessary for fair resolution of the issue---and in the Council proceedings in issue here, I see no suggestion of detachment (or lack thereof) concerns evident---remand would not resolve the problem. On that basis, it is my belief that the review extends to a determination of an appropriate sanction.

Based upon all of the considerations noted above, the City is ordered to renew the license of the IRR and that license is suspended for a period of 15 days for the violations established in this proceeding.[3] Mr. Whitcomb should submit an order to that effect under the 5 day rule for my signature.

Sincerely,

Christopher R. Foley

Circuit Judge

[3] Pursuant to MCO 108.11-5, the Public Entertainment License is renewed but suspended for the same period.