

LICENSE APPEAL COMMISSION  
CITY OF CHICAGO

Tice, Inc.	)	
Brian Roginski, President	)	
Applicant (COP-IA)	)	
for the premises located at	)	
1332 North Milwaukee Avenue	)	Case No. 08 LA 50
	)	
v.	)	
	)	
Department of Business Affairs & Licensing	)	
Local Liquor Control Commission	)	
Mary Lou Eisenhauer, Acting Director	)	
	)	
	)	

ORDER

OPINION OF CHAIRMAN FLEMING

Tice, Inc. applied for and received on September 12, 2007, conditional approval for a Consumption on Premises - Incidental Activity liquor license for 1332 N. Milwaukee. The pertinent section of the Municipal Code is Section 4-60-042 which states “the local liquor control commissioner shall notify the applicant whether the applicant is conditionally approved to receive the described license for the subject premises, conditioned upon the applicant (i) completing the structure substantially as presented in the building plans and floor plan submitted with the application for conditional approvals; and (ii) upon inspection approval by the fire department, the department of health and the department of buildings.”

An original denial letter was sent to the applicant on August 6, 2008. The basis stated for this denial was that the applicant failed to complete the structure substantially as presented in the building plans and floor plans submitted with the application for conditional approval. Specifically, the Local Liquor Control Commission determined the completed renovations substantially deviate from the original approved activity of a "full service restaurant with incidental liquor" and instead, reflected the primary business activity will be the sale of alcoholic liquor. The evidence in support of this determination was based on an onsite investigation that revealed the first and second floor did not have restaurant type dining tables and dining chairs. The type of "banquette seating" were too small and low to the ground to support meal service. The original application did not have tables or booths measured under four feet. This investigation also revealed the original restaurant menu has been replaced by a "bar menu". An appeal of this original denial was filed on August 8, 2008. This matter was heard on the general call on August 14, 2008, and was set for hearing on September 4, 2008. On August 19, 2008, the City's Motion to Reset the Hearing was granted over objection and the matter was set for hearing on September 25, 2008. This order stated that any amended denial was to be filed by September 4, 2008.

On September 4, 2008, an amended denial letter was sent to the applicant. It repeated the original basis for denial that the structure was not substantially the same as presented in the original plans. It also alleged as a second basis for the denial that the required approvals from the Department of Buildings - Special Inspection Programs and the Department of Buildings - Plumbing and Ventilation sections had not been approved. The case proceeded to hearing on

September 25 and November 25, 2008.

Joy Adelizzi, has been the Deputy Director of the Department of Business Affairs and Licensing/Local Liquor Control Commission for three years. She identified City's Exhibit 8, in evidence, as the application made by Tice, Inc. for 1332 N. Milwaukee. The application was for retail food, public place of amusement and consumption on premises - incidental activity. The denial was based on the position that the premises are not set up as a restaurant but as an establishment with primary sales as sale of liquor. No tavern application was filed. Ms. Adelizzi pointed out the tables in the application were not under four feet high as found in an onsite investigation. The original plans had taller tables and chairs. The onsite investigation observed bar stools at the bar which were not reflected in the original plans. The menus seen by this onsite investigator was a bar menu which was different from the menu presented with the application.

Ms. Adelizzi also testified that while the Health Department had approved its inspection, the Special Inspection Program had not approved its inspection in June of 2007 and that Plumbing and Ventilation were pending. Ms. Adelizzi returned to testify on November 25, 2008. At that time, Plumbing and Ventilation inspections were approved but the Special Inspections had not been approved as of that date. There were problems with Iron and New Construction inspections.

Kevin Roth is a City of Chicago building inspector who went to 1332 N. Milwaukee as

part of the Special Inspection Program to do an occupancy inspection on June 6, 2008. The inspection was not approved because of problems with the scales on the drawing that prevented him from determining occupancy. He identified City's Exhibit 10, in evidence, as a document he gave to Randy Roginski, the business contact, on June 5, 2008, rejecting the application. As of the date of his testimony on September 25, 2008, the occupancy placard had not been issued. Applicant's Exhibit 12, in evidence, is a receipt for an application for occupancy certificate indicating the occupancy diagram was approved by Kevin Roth on November 21, 2008.

Roxanne Spruance testified she has been a client for eight years and was hired in 2007 to be the chef at this establishment. She designed the menus and designed the kitchen. She described the kitchen equipment purchased. She also described how the banquette seating worked and how the design was capable of serving full meals.

Randy Roginski testified he is a partner and owner of Tice, Inc. at 1332 N. Milwaukee. He described the application process from his perspective. The building is substantially similar to the plans. He explained that the difference in the two menus was to give a customer the option to buy smaller portions at a lower price. He described the inspection process during the one year conditional approval period and subsequent to that the expiration of the one year period. He testified the first time he learned the premises had not passed inspection was when the amended letter of denial was read to him. He testified the banquette tables have been removed and are in storage in the basement. "Normal" restaurant tables and chairs have been installed. He presented permits signed off by Ventilation on June 5, 2008, by Electrical on June 5, 2008,

and by Plumbing with conditions on June 25, 2008. He presented in evidence an approved occupancy diagram signed off by Kevin Roth on November 21, 2008.

On occasions in the hearing it was mentioned by this Commissioner that there are other cases pending before this Commission where applicants have been given additional time to obtain inspection approvals. These comments should not be construed as suggesting there is an official policy of the Local Liquor Control Commission to give extensions and that there was something improper in their enforcement of the one year deadline to obtain inspection approval on licenses conditionally approved. Conditional approval, as in this case, is governed by a specific section of the Municipal Code, 4-60-042. That section of the code indicates conditional approval shall be valid for one year from date of issuance. It also requires inspection approval in that one year period from the Department of Fire, Health and Buildings. Additionally, this case is not one in which denial was made solely on lack of inspection approval as the City also argues the site is substantially different from the original plans.

After a thorough review of the record and having had an opportunity to observe the witnesses testify and weigh their credibility, this Commissioner feels the City did not prove by a preponderance of the evidence that it was proper to deny this license on the basis that the structure is not substantially as presented in the building plans and floor plans submitted with the application for conditional approval. The difference in the type of tables and chairs and the different menus were credibly explained by the applicant's witnesses. Any such differences do not use to the standard of proof that this establishment was not completed substantially as set out

in the plans. This is the first issue to be decided in this case.

The City did prove by a preponderance of the evidence that it was proper to deny the license since the Special Inspections Program from the Buildings Department did not approve its inspection for the occupancy placard, within the one year period after conditional approval was issued on September 12, 2007. While Inspector Roth approved the application on November 21, 2008, the applicant did not have the placard as of November 25, 2008. On this basis alone, the denial was appropriate. Conditional approval was valid until September 12, 2008, and inspection approval from Buildings had not been obtained.

This may seem like a harsh decision but the scope of review of this Commission is limited to de novo review of the propriety of the decision of the Local Liquor Control Commission. This Commission does not have equitable powers to rewrite the Municipal Code and is required to apply the provisions of the Municipal Code to the evidence presented at the de novo hearing. The decision of the Local Liquor Control Commission is affirmed.

#### OPINION OF COMMISSIONER SCHNORF

While I was not present for the hearings held before the License Appeal Commission, I have reviewed the record and concur with Chairman Fleming's opinion in affirming the decision of the Local Liquor Control Commission.

## OPINION OF COMMISSIONER KOPPEL IN DISSENT

The applicant has applied for a Consumption on Premises - Incidental Activity liquor license so they can serve wine and beer in their newly established restaurant. The incidental liquor license was denied because the City said that the inside of this place looked like a tavern and not a restaurant. There was a restaurant before the present owner purchased the place. The City stated that it did not look like a restaurant because the tables and chairs were not similar to the plans.

The owner, a young man, spent \$200,000 to renovate this property. He has hired a chef who is qualified. The chef testified that this is a full service restaurant with a complete menu and excellent restaurant facilities. The applicant needs to serve wine and beer in order to be competitive and as stated before this license was denied because the City said the inside did not look like a restaurant.

A licensee is responsible to the community surrounding the licensed premises. A city liquor dealer's license issued shall be subject to revocation if the licensee's business sells more liquor than food. This application was approved by the police. There are ways to eliminate bad places by due process.

Under Section 4-60-142, a licensee is responsible to a community surrounding the licensed premises. Since this city has due process remedies it should proceed in that fashion and

not use a back doorway of revocation by disallowing the application of a legitimate business.

In the event the applicant sells more liquor than food he is subject to being revoked.

To deny an incidental license because its interior looks like a tavern is improper. To deny this license is prejudice. The City Council is capable of changing the law and being more specific in disclosing the proper criteria. The City is reversed.



THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local  
Liquor Control Commissioner of the City of Chicago be and the same hereby is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: December 17, 2008

Dennis M. Fleming  
Chairman

Stephen B. Schnorf  
Member