

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)

**FILED**

MAY 15 2009

MARIANO V. FAVAZZA  
CLERK, CIRCUIT COURT

BY \_\_\_\_\_ DEPUTY

J & M GROCERS, INC., )

Petitioner, )

vs. )

THE CITY OF ST. LOUIS, )  
DEPARTMENT OF PUBLIC SAFETY, )  
EXCISE DIVISION, )

Respondent. )

Cause No. 0822-CC08776

Division No. 29

*Standard  
Review*

ORDER

This matter comes before the Court for review of the August 25, 2008, decision of the Excise Commissioner (Commissioner) of the Department of Public Safety of the City of St. Louis (City), sustaining the protest against the continuation of Petitioner's full package liquor license and finding (1) that the protesters have sustained their burden of proof by providing signatures of a majority of eligible property owners within a 350-foot radius of the licensed premises and (2) that Petitioner failed to provide substantial evidence that the continuation of its full package liquor license is not detrimental to the community. The Court has reviewed the record, which consists of the transcript of the August 8, 2008, hearing and the Commissioner's decision,

and the evidence adduced at the hearing, and now rules as follows.

Petitioner is a Missouri corporation that does business as Delmar Express Market, at 5899 Delmar Boulevard. Petitioner was issued a full package liquor license by the City on July 5, 2006. Petitioner received a restricted liquor license on October 25, 2006. On June 12, 2008, Darcell Braylock submitted letters protesting Petitioner's liquor license. The protest hearing regarding the continuation of Petitioner's license was held on August 8, 2008.

In his August 25, 2008, decision, the Commissioner found that the protestors met their burden of proof by providing the signatures of a majority of eligible property owners (17 of 32) within a 350-foot radius of Petitioner's business and that Petitioners did not provide substantial evidence that continuation of its full package liquor license was not detrimental to the community. Under § 14.08.150 of the Revised Code of the City of St. Louis, if the protestors can submit a protest petition bearing the signatures of a majority of property owners within the petition circle, the licensee bears the burden of showing by a preponderance of evidence that renewal or continuation of the license would not be detrimental to the neighborhood.

Petitioner seeks a reversal of the Commissioner's decision on the grounds that it is unsupported by competent and substantial evidence and is arbitrary and capricious. Specifically, Petitioner contends that the Commissioner's decision was based on hearsay evidence and information obtained from third parties. Further, Petitioner submits, the record fails to show that Petitioner was in violation of the license or of any relevant regulation, statute, or ordinance; that the character of the neighborhood had changed since issuance of the license; or that loitering, littering, public drinking, crime, illegal drug use or sale, harassing behavior, or noise near the licensed premises existed as a result of persons who patronized Petitioner's establishment. Petitioner further states that there is no evidence of congestion or lack of proper lighting on the premises. Additionally, Petitioner maintains that there was testimony indicating that a remedy less drastic than license discontinuation could address the protestors' concerns.

Respondent seeks an order affirming the Commissioner's decision and counters that Petitioner failed to formally object to the introduction of hearsay evidence and therefore waived its objection. Respondent further maintains that the decision was supported by substantial evidence and was not arbitrary and

capricious but rather is consistent with the criteria set forth in § 14.08.150 of the Revised Code.

Actions delegated by a municipality to a board or retained to itself to enforce an ordinance are administrative and are subject to judicial review under § 536.100 RSMo, if the case is contested. Wrenn v. City of Kansas City, 908 S.W.2d 747, 749 (Mo.App. W.D. 1995); In re Application of 354 Skinker Corp., 622 S.W.2d 724, 727 (Mo.App. E.D. 1981). The scope of review of an administrative decision, such as that of the Commission, is limited to a determination of whether the action is supported by substantial evidence based on the whole record, violates the provisions of any law, or is otherwise arbitrary or an abuse of discretion. Perry v. City of St. Louis Civil Serv. Comm'n, 924 S.W.2d 861, 863 (Mo.App. E.D. 1991); § 536.140 RSMo.

A reviewing court views the record in the light most favorable to the administrative decision. Clark v. Reeves, 845 S.W.2d 28, 31 (Mo.App. W.D. 1993). It is the function of the agency, not the Court, to determine the credibility of witnesses. Hanford v. City of Arnold, 49 S.W.3d 707, 710 (Mo.App. E.D. 2001).

The record before the Court contains the following evidence. Petitioner contends that it has a security guard on premises from 4 to 9 p.m. daily, that liquor sales probably

comprise more than fifty percent (50%) of its income, and that it is in compliance with the terms of its restricted license. Darcell Braylock, the protest representative and the executive director of the Skinker-Debaliviere Community Council, stated that her office received complaints of public urination behind Petitioner's property and in the parks, which are located near Hamilton Elementary School. She also received complaints of store patrons using portable toilets set up for the use of schoolkids and patrons pooling money together to buy liquor and later dividing it into single-serve portions.

Ms. Braylock stated that the loitering conditions were intolerable because of the proximity of the store to the elementary school and the park used by children. She related a resident's report of being hounded for change by patrons trying to get money for liquor. Although her office is used as a resource for resident complaints and the office keeps a file on resident complaints, Ms. Braylock has not witnessed any adverse activity firsthand. Petitioner's counsel commented that Ms. Braylock's testimony was hearsay, based on second-hand reports taken from others and not on Ms. Braylock's own observations.

Magdi Gharid, Petitioner's co-owner, stated that he tried to resolve the complaints that Ms. Braylock related. He blames the loitering problem on the bus stop and riders on the corner

in front of the store. In this regard, Mr. Gharid stated that he has been trying to contact Metro to see whether a new stop could be arranged. Mr. Gharid testified that in the morning the owners patrol premises and "we always keep it clean and in good shape."

Resident Lana Stine testified that she personally saw people loitering behind the store, obviously not waiting for the bus, since the bus stop was not behind the store. She stated that she couldn't tell whether these individuals had been drinking and that she had been in the store only once. Joseph Palm, a committeeman of the 26th Ward, stated that his understanding was that Petitioner's new owners would invest funds into the store and that he was originally supportive of the store's operations with liquor license restrictions. However, Mr. Palm stated that he had seen people with liquor at Delmar and Hampton drinking outside and that some individuals accosted his mother, girlfriend, and grandmother, as well as others, for money on more than one occasion. He also stated that he personally witnessed individuals engaging in public urination after leaving the store, in front of the premises, on at least three occasions, most recently within the past six months and all within the past year.

Also testifying at the hearing was David Mastin, who stated that he represents partnerships that have invested in the neighborhood. Mr. Mastin stated that he personally observes on a regular basis the section of Delmar Blvd. in question and testified, "It is the exception when there is not somebody ... some guy standing out on the premises or on the sidewalk next to the premises." Sometimes, he said, these people have bottles and sometimes they are loud. He concluded that "...it amounts to a liquor store with a lot of loitering." Regardless of whether these people are confirmed as store customers, he continued, they loiter there and "that's a real negative for our development up and down the street." Mr. Mastin said that he usually witnessed these individuals during the day, but that he has seen them from 7:30 a.m. to 10 or 11 p.m. on the corner. He stated that Gharid's assumption that these persons are Metro patrons is not impossible but unlikely.

Joseph Mostafa, Petitioner's managing officer, testified that he would be willing to extend the hours of the store's security guard to noon to 9 p.m. He also stated that he believes that the panhandling incidents involving Mr. Palm were related to Mr. Palm's candidacy for the House of Representatives. While Mr. Mostafa acknowledged that the store advertises single-serve cans of beer, he advises customers they

have to buy at least three cans, in accordance with the license restriction.

Alderman Frank Williamson stated that Petitioner is the "ugly duckling on the block" in that the building is in need of rehab and reinvestment. He opined that revocation of Petitioner's license is unlikely to solve loitering problems on the corner, insofar as the store and bus stop would remain.

JoAnn Vatcha, chair of the Delmar Commercial Committee, testified that she met with Petitioner's owner about the problems reported with loitering and unseemly behavior. Ms. Vatcha stated that single-serve liquor containers are being thrown over fences in the vicinity, and that a makeshift lounge was created by lining up old couches in the alley along the fences. She stated that she has seen people sitting on these couches in the middle of the day, drinking, behind and to the side of the store.

Resident Brenda Simpson also cited a loitering problem and commented that she did not see Petitioner's security guard out on duty. She also stated that residents do not patronize Petitioner's store, which the residents perceive as a liquor store rather than a grocery store and which they do not feel safe patronizing as a grocery store. Ms. Simpson stated that she has seen customers go into the store and then come out and



loiter, within the past six to 12 months, on the store lot, not at the bus stop.

On the basis of the above summarized testimony, the Court believes that the record supports the Commissioner's conclusion that Petitioner has not met its burden to show, by the preponderance of the evidence, that continuation of its license would not be detrimental to the neighborhood in which it is located. While the Court is mindful of the investment and efforts of Petitioner's owners, the relevant criterion under the Revised Code is detriment to the neighborhood.

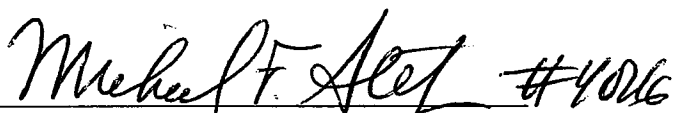
The record contains testimony of witnesses who have personally observed loitering, panhandling, and public urination, reasonably attributable to Petitioner's patrons who have purchased liquor. Several of the residents expressed concerns that the conduct observed is especially detrimental due to Petitioner's proximity to an elementary school and a park, where children are present. The Commissioner was within his discretion to believe that the loitering problems in the back off Petitioner's store stemmed from the store and not from the bus stop on the corner, and that the panhandling instances involving Mr. Palm and his relatives were not solely attributable to his candidacy. Further, there was evidence that several residents had discussed loitering and related issues with Petitioner's

owners but that the problems have persisted. The Court therefore finds that the Commissioner's decision, that Petitioner had failed to show by the preponderance of the evidence that the continuation of its liquor license would not be detrimental to the neighborhood, was supported by competent evidence.

ORDER

WHEREFORE, IT IS ORDERED that the August 25, 2008, decision of the Commissioner, sustaining the protest against the continuation of Petitioner's liquor license is hereby sustained.

SO ORDERED:

  
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Michael F. Stelzer, Judge

Dated: May 15, 2009

cc: Andrea L. Weiss, Attorney for Petitioner  
Daniel J. Emerson, Attorney for Respondent