

CITY OF EVANSTON, ILLINOIS

In Re: the Application of Ted Mavrakis)
d/b/a Tilted Kilt)
Proposed Licensee)
)

LOCAL LIQUOR COMMISSIONER'S FINAL DECISION
DENYING THE APPLICATION OF TED MAVRAKIS d/b/a THE TILTED KILT

This matter coming before the City of Evanston Local Liquor Commissioner, Hon. ELIZABETH B. TISDAHL, and the parties fully advised on the premises, the following findings are entered as a matter of Record, and it is HEREBY ORDERED:

FINDINGS

1. The proposed licensee, Ted Mavrakis (hereafter "Mavrakis"), applied for a Class B1 liquor license to operate the "Tilted Kilt" at 1601 Sherman Avenue, in Evanston, Illinois.
2. Pursuant to notice, the local liquor commissioner, City of Evanston Mayor Elizabeth B. Tisdahl (hereafter "Mayor Tisdahl"), conducted two public hearings of the Evanston Liquor Control Board regarding the proposed application. Due notice of both hearings was given, pursuant to the Open Meetings Act.
3. The second hearing on April 26, 2011 was transcribed by a certified court reporter.
4. Numerous City of Evanston residents appeared at both hearings to voice their respective opposition to and support of the granting of the proposed license.
5. Mr. Mavrakis, as well as corporate representatives of the Tilted Kilt, spoke on behalf of the application and were questioned by Mayor Tisdahl, liquor board members, and the City Corporation Counsel.
6. 19 residents appeared at the second hearing and spoke to Mr. Mavrakis' application. 12 speakers opposed the license, and 7 were in favor.
7. At the hearing, 12 exhibits were introduced into the Record. For purposes of this Order, the Record is referenced hereto as if fully set forth herein.
8. At the first hearing, concerns were expressed regarding the location of the Tilted Kilt and street traffic. The proposed establishment would be located in the downtown Evanston area, in the midst of mixed use residential and commercial developments, and at the location of Fountain Square, a traditional community meeting location. And, the key topic of community standards regarding the attire of the "entertainers" was raised at that hearing as well.

9. Over the course of the intervening months between the first and second hearings, Mayor Tisdahl was contacted by hundreds of Evanston citizens regarding the application. The community input received indicated the majority of citizens opposed the application. Foremost among the reasons for opposition was the concern regarding the attire of the Tilted Kilt employees, specifically, the overly suggestive nature of the minimal attire of the female staff. The community input received regarding the application demonstrated that the community standards of the City of Evanston precluded the Tilted Kilt from employing staff wearing the mandatory clothing as depicted in the Record. Upon questioning, the Tilted Kilt's corporate representative confirmed that they would not agree to any alteration whatsoever to the female staff uniform.

10. The community standards issue, along with traffic and pedestrian congestion concerns, were all adverse to the application.

11. Upon conclusion of the hearing, Mayor Tisdahl took the matter under advisement before issuing this decision.

APPLICABLE LAW

12. A liquor commissioner may legitimately deny the issuance of a license based upon genuine reasons related to public health, safety and morals. *Ace Produce, Inc. v. Illinois Liquor Control Commission*, 93 Ill.App.3d 381, 384 (5th Dist. 1981). Indeed, "The traffic conditions in an area are a factor which may be properly considered by a local commissioner in refusing to issue a liquor license." *Id.* In *Ace*, the court affirmed the decision of the local liquor commissioner and the Illinois Liquor Control Commission in denying a liquor license to an applicant based upon the stated reason regarding traffic. In so doing, the court deemed the testimony regarding potentially hazardous traffic congestion caused by a licensed establishment to be reliable, and the denial of the license by the liquor control commissioner was based upon good cause. *Id.* at 385.

13. The Illinois Constitution vests the City of Evanston with the powers of a home-rule unit of government, "to exercise and perform any function pertaining to its government and affairs, including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to license...." Ill. Const. Article VII, § 6(a) (1970).

14. As a unit of local government the City of Evanston further possesses all standard police powers, "the attribute of sovereignty in every government by which it may protect lives, health, morals and general welfare." *Sherman-Reynolds, Inc. v. Mahin*, 47 Ill.2d 323, 326 (1970). Liquor control is unquestionably a matter involved in the public health, safety, morals and welfare and a home rule community is granted broad powers in local liquor licensing and regulation. *Illinois Liquor Control Commission v. City of Joliet*, 26 Ill.App.3d 27 (3rd Dist 1975). See also, *Illinois Liquor Control Commission v. Calumet City*, 28 Ill.App.3d 279 (1st Dist. 1975).

15. In making determinations with regard to the licensing of local liquor businesses it is established that a considerable degree of discretion is vested in the local liquor control commissioner.

The business of selling alcoholic liquors at retail when not properly done is a business 'fraught with danger to the community' and raises peculiarly local problems pertaining to the public health, safety and morals of the community. Thus, a sound basis in public policy exists for vesting discretion in the local liquor control commission. *Stevens v. Lake County*, 24 Ill.App.3d 51, 2nd Dist 1974.

16. It is uncontradicted that local regulation of liquor sales is paramount, that a home rule city may justly regulate for the health, safety and morals of the community, as dictated by local community standards, and that the liquor commissioner's ruling on a license application is afforded great discretion.

ORDER

17. During the consideration of this license application, the residents of Evanston, the liquor board, and Mayor Tisdahl all spoke with clear voices and acted with good intentions.

18. Applicant Ted Mavrakis' application for a liquor license is hereby denied.

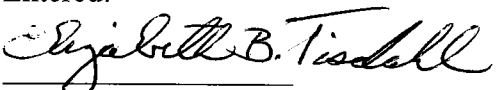
19. The reasons for the denial stem from the public safety concerns expressed by the residents and the fact that the proposed licensee's establishment does not comply with recognized Evanston community standards.

20. Furthermore, the applicant confirmed at the second hearing that there would be no deviation in staff attire. Thus, there is no opportunity for the applicant to even attempt to comply with Evanston community standards.

21. The Record further evidences that the applicant simply cannot overcome the strong community-based opposition to placing a congested and noisy bar in the proposed location.

22. This is a final administrative decision pursuant to 235 ILCS 5/7-9.

Entered:



Elizabeth B. Tisdahl

Local Liquor Control Commissioner

Date: May 2, 2011