Ambrose

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1773 January 18, 1968

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ITEM

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1. APPELLATE DECISIONS - BERGEN COUNTY AERIE #3291 OF THE FRATERNAL ORDER OF EAGLES v. LODI.

BERGEN COUNTY AERIE #3291 OF THE FRATERNAL ORDER OF EAGLES, Appellant, v. MAYOR AND COUNCIL OF THE BOROUGH OF LODI, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Jerrold M. Fleisher, Esq., Attorney for Appellant.
John M. DiMaria, Esq., Attorney for Respondent.
Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq., Attorneys for Objector South Bergen County Licensed Beverage Assn.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from a denial on October 24, 1966 of an application for club license for premises 21-23 Terhune Avenue, Lodi.

The grounds of appeal urged by appellant in its petition filed herein may be summarized as follows:

(a) No reasons were stated for denial of its application;

(b) Alcoholic beverages would be served to members only at the time it held active meetings;

(c) No objectors appeared at the hearing on the application; and

(d) The action of respondent was arbitrary and capricious.

Respondent's answer avers that the reasons for the denial are as follows:

"a) Close proximity to already licensed premises.
b) Close proximity to the Immaculate Conception Church.
c) Petition submitted by residents of the Borough of Lodi requesting denial of said application.
d) Applicant not being organized and situate in the Borough of Lodi for a period of three (3) years, and not being an owner or tenant of said premises for a period of three (3) years."

It appears herein that on June 30, 1966, appellant received its charter from the Grand Aerie, Fraternal Order of Eagles. Inasmuch as a certificate had been obtained from the Director that appellant has been credentialed as a constituent unit of a national order which has been in active operation in this State for at least three years prior to the date of submission of the application for license, the requirement of three years active operation and continuous possession of club quarters is inapplicable. Rule 5 of State Regulation No. 7.

It has been shown that appellant has seventy-seven members, two of whom are residents of Lodi. At the time of the hearing, the petition mentioned in respondent's answer (marked as an exhibit in evidence herein) was submitted, which petition contained 109 signatures of residents of Lodi objecting to the issuance of the license.

Steven Sireci, borough clerk, testified that on September 12, 1966, appellant's application for club license was approved by respondent but, subsequent thereto, its action was rescinded when it was ascertained that the notice of intention to apply for the license was inserted in The Record, a newspaper published in Hackensack. Thereafter, leave was granted to appellant to re-advertise its notice of intention in the Lodi Messenger, a newspaper published in Lodi.

Inasmuch as appellant's original advertisement in The Record was contrary to the provisions of R.S. 33:1-25 and Rule 7 of State Regulation No. 6, respondent lacked jurisdiction to consider the application for the club license and approval thereof become a nullity. Cf. Klein and Tucker v. Fair Lawn et al., Bulletin 1175, Item 3; Lending v. Palisades Park et al., Bulletin 1329, Item 1. Hence the rescission of the original grant was proper.

Mayor Frank Belli testified that after the readvertising, he and three of the four members of the Council voted to deny the application filed by appellant. The reasons expressed by Mayor Belli, which he indicated formed the basis for respondent's decision, were that the best interests of the people who signed the petition, and particularly the church area, motivated the denial of the application. He further stated that while appellant may be a nationwide fraternal organization, he felt that its existence in the community was merely temporary and that "a firmer establishment should be had before we would make the consideration, and perhaps in another area." Mayor Belli indicated that he had no objection whatsoever to the fraternal organization.

During cross examination the Mayor said that the church to which he referred as a reason for respondent's action is estimated by him to be "not more than two or three hundred feet" where a new rectory is being built. He stated that a tavern is immediately adjacent to appellant's premises. When questioned by the Hearer for more specific testimony as to the location of the church and school, Mayor Belli answered:

> "The present church is further. In other words, the street separates it with the front footage of perhaps two hundred feet also. But their rectory and their new building, whatever it may be used for, will be in closer proximity than the church itself.

In other words, part of their property is closer to this particular area."

The Mayor further testified that he felt it was not for the public interest to grant the license in question because of the proximity of the church and also the fact that seventy-five of the seventy-seven members of the applicant club were non-residents of the Borough.

Under the circumstances appearing in the instant case, the fact that a majority of the members of appellant are not residents of the Borough does not, in itself, disqualify the applicant from obtaining a club license.

John Tonzillo, testifying on behalf of the objector South Bergen County Licensed Beverage Association, stated that he lived in a residence about 150 feet from appellant's premises owned by William Jerlat, operator of the licensed premises next door to appellant's premises. He was not a member of appellant organization. Three weeks prior to the hearing herein, at about 8:30 in the morning, Tonzillo saw Kenneth J. Nixon, secretary of appellant, and said to him, "I sure can stand a drink." Nixon then "invited me inside and I had my drink." After receiving the drink, "I left money. I gave him money on the bar. I gave him a half a dollar, fifty cents, to be exact." Asked whether or not he was requested to pay for the drink, he answered, "No, sir, I was not."

Jerry Deblon testified that he and a friend (Mr. Griffin) attended appellant's "first public dance" and that they sat at the bar. Neither he nor Griffin was a member of the fraternal organization. He observed a man "who had a dollar and a dime on the bar" pick up two drinks and walk out. The witness "put $5 on the bar. I ordered a Scotch highball for my friend and a rye highball for myself." As he and his friend picked up the drinks, the bartender was called outside. After coming back to the barroom, the bartender remarked, "Oh, that's on us. This is a private club. We don't charge for drinks." Deblon questioned the bartender concerning the gift of the drinks and was told, "Well, on occasion we do that." Both he and Griffin had another drink but "They wouldn't take any money. They did say you can put the money into the contributory box they had in the hall there."

On cross examination Deblon stated that he had never seen the man who had obtained drinks previous to service to him and Griffin. It was further asked whether or not he knew Mr. Jerlat and he responded that he did know him, that he was a friend of his, but he did not go to appellant's premises at Jerlat's request. However, he had spoken to Jerlat "not only afterwards but before."

It was stipulated by counsel that the testimony of Mr. Griffin, if called as a witness, would be substantially similar to that given by Deblon.

I am not impressed with the testimony with respect to the alleged occurrences, as related by the witnesses for the objector, namely, Tonzillo, Deblon and, by stipulation, Griffin, in its implication that appellant had engaged in sale of alcoholic beverages without license and was therefore unfit for license.

With reference to the location of appellant's premises adjacent to an already licensed premises, this in itself would have no bearing on the issuance of a club license. The object of a club license is not to supply the needs of the neighborhood. The holder thereof is permitted to sell alcoholic beverages only to bona fide members and their bona fide guests. This reason for denial given by respondent carries no weight so far as a club license is concerned. Irish American Association of Kearny, N. J. v. Kearny, Bulletin 293, Item 11; Re Branch 13, American Federation of Hosiery Workers, Bulletin 523, Item 5; Re Indian Lake Community Club, Inc., Bulletin 845, Item 8.

Another reason for its action given by respondent was because the Mother Superior of the Immaculate Conception Church opposed the issuance of the said license. However, during the pendency of this appeal, a letter dated May 6, 1967, was received by the Director from Mother Mary Virginette, Provincial Superior, Immaculate Conception Convent, Lodi, withdrawing her objection to the issuance of a club liquor license to appellant.

Petitions were presented to respondent at the hearing below by William Jerlat, containing names of alleged objectors to the issuance of a club license to appellant, on each of which petitions was typewritten the following legend:

> "The Borough of Lodi has an over abundance of Alcoholic Beverage Licenses (Twenty-eight more than the state law per population calls for.)
>
> "Therefore, we the following citizens of Lodi protest the issuance of any type of Alcoholic Beverage License, Distribution, Consumption or Club to the Fraternal Order of Eagles to be located at 21 Terhune Avenue, Lodi, N. J."

This appears to be in the nature of a general objection by the signatories thereof. Petitions in themselves carry little weight. The objectors did not appear at the hearing herein so that an opportunity might be given to appellant's attorney to cross-examine them in order to ascertain their reasons for their objections. Petitions are accepted in hearings of this kind for the purpose of obtaining the sentiment of various persons in the municipality. The weight to be given them, of course, is within the discretion of the issuing authority. I might add that these petitions were circulated at the behest of William Jerlat, president of South Bergen County Licensed Beverage Association and the operator of a liquor establishment next door to the premises sought to be licensed.

It was agreed by the attorney for respondent and also by Mayor Belli that there is no ordinance restricting the number of club licenses to be issued in the Borough.

In order to deny the grant of a club license, the reasons given by the issuing authority must be justifiable. I find, after careful examination of the testimony and the facts presented herein, that the reasons set forth in respondent's answer and those given by Mayor Belli are not sufficient to deny a club license to appellant. Cf. Lakewood Estonian Association v. Jackson, Bulletin 1001, Item 1. There has been no evidence to indicate that appellant's premises are not such that might accommodate the dispensing of

liquor to club members and their bona fide guests.

Therefore, it is recommended that since appellant appears to be fully qualified and since respondent's reasons for denying the application are not meritorious, respondent's action should be reversed and respondent directed to issue a club license to appellant.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorneys for the objector, in accordance with Rule 14 of State Regulation No. 15. Thereafter, I requested that the attorneys for the objector and the respective parties present oral argument before me relating to the exceptions taken to the report filed by the Hearer in this case.

After oral argument, a supplemental hearing was scheduled for the purpose of receiving in evidence the written withdrawal of an objection theretofore filed on behalf of the Immaculate Conception Convent and also to give respondent an opportunity to produce testimony with reference to the effect of the aforesaid objection upon its action in denying the issuance of the license in question.

The letter dated May 6, 1967 signed by Mother Mary Virginette, CSSF, Provincial Superior, Immaculate Conception Convent, Lodi, was marked in evidence as Exhibit A-1.

Prior to the supplemental hearing, objector South Bergen County Licensed Beverage Association informed the Division that it was withdrawing its objection to the issuance of the club license to appellant.

Frank Belli, former Mayor of respondent, who testified at the time of the appeal hearing, testified herein that the letter of objection of the Immaculate Conception Convent had been considered as the sole motive for respondent's action in denying appellant's application for the club license.

Under the circumstances and after careful consideration of the record herein, I shall adopt the recommendation of the Hearer and direct that a club license be issued to appellant in accordance with the application filed in this matter.

Accordingly, it is, on this 15th day of November, 1967,

ORDERED that the action of respondent be reversed and it is hereby directed that a club license be issued to appellant, provided that there has been compliance with all statutory requirements in the matter.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - RED RANCH, INC. v. WALL.

RED RANCH, INC., t/a Red Ranch, Appellant,	)	ON APPEAL CONCLUSIONS AND ORDER
v.	)	
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WALL, Respondent.	)	

Carton, Nary, Witt & Arvanitis, Esqs., by James D. Carton, III, Esq., Attorneys for Appellant.
William C. Nowels, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report here:

Hearer's Report

This appeal challenges the action of respondent Township Committee of the Township of Wall (hereinafter Committee) whereby on June 27, 1967, it unanimously approved appellant's application for renewal of its plenary retail consumption license for the period expiring June 30, 1968, for premises 2655 River Road, Wall Township, subject to the stipulation that the "grounds surrounding building" be deleted from the application.

In its petition of appeal, appellant alleges that the Committee's action was "unlawful, illegal and arbitrary" because the said stipulation was not embodied in the resolution but was imposed "by letter" after the resolution was adopted.

The Committee's answer, as amended by letter dated July 17, 1967 with respect to certain inadvertent language therein, admits the jurisdictional allegations and asserts that its action was lawfully adopted at its meeting on June 27. In separate defenses it defends that (1) its action was reasonable and well founded "in light of the facts", (2) its action was motivated by its desire to protect the "health, safety and morals and welfare of the residents" and was enacted by reason of complaints made by residents and "improper activity on the part of patrons disturbing the peace and quiet of the neighborhood", (3) appellant extended its activities in the erection of a bar on the outside of the premises without prior approval of the Committee, contrary to the Zoning Ordinance of the Township of Wall, and without securing necessary building permits, and (4) it acted within the exercise of "the wide discretion granted to it by statute."

Upon the filing of the notice of appeal, an order was entered by the Director extending the 1966-67 license until further order of the Director.

The appeal was heard de novo, with full opportunity for counsel to present testimony under oath and cross-examine witnesses. Rule 6 of State Regulation No. 15.

I

The petition of appeal raises certain jurisdictional and procedural issues which require resolution before the substantive issue is considered.

Appellant maintains that at the June 27 meeting, the Committee voted, in the same resolution, to renew the license and to delete that part of Question #7 in appellant's application which stated "grounds surrounding building." Appellant argues that "The only proper way for the [Committee] to have attached the condition would be to have a separate resolution. It is improper to just state that the application or a part thereof be deleted, when it has already been executed by the [appellant] and no vote is taken on the action of the [Committee] separately." It argues further that the Committee was without power to amend the application but was required to accept or reject the application in the form submitted. Finally it contends that the action was invalid because it was done by motion instead of by resolution.

The short answer to these contentions is that the Committee did not attach or impose any special condition in approving the said renewal application, pursuant to R.S. 33:1-32. It simply approved the said application upon the stipulation that the application be amended to delete that part of Question No. 7 therein which stated "grounds surrounding building" as part of the licensed premises. The practical effect of the Committee's action was to limit its approval of the operation of the said license to the building, as described in the said application (i.e., to grant the application with respect thereto) and to exclude from its operation the grounds surrounding the building (i.e., to deny the application with respect thereto). The Committee, in the reasonable exercise of its discretion, can limit the licensed premises as aforesaid. See Rule 8 of State Regulation No. 2. Since no special condition was imposed, no prior approval by the Director was required.

It is well established that the Committee's action upon motion made has the same effect as that of a resolution as reflecting lawful procedure. Keyport Sewerage Authority v. Granata, 52 N.J. Super. 76. In Woodhull v. Manahan, 85 N.J. Super. 157 (App. Div. 1964), the court cited Keyport with approval, and quoted 5 McQuillin Municipal Corporations (3d ed. 1949) sec. 15.08, p. 74:

> "It has been said that there is no substantial difference between a motion and a resolution, that the terms are practically synonymous, and that they are the same."

I find that the Committee acted properly in approving by motion adopted, the application as amended.

In any event, since this is a plenary appeal de novo, appellant has been given a full opportunity to present this matter in full, and any procedural infirmities arising from the action of the Committee are cured upon this hearing. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943). See Florence Methodist Church v. Florence Township, 38 N.J.Super. 85.

II

The central and dispositive issue raised by the

petition of appeal is whether the action of the Committee in approving the application in part was arbitrary and unreasonable.

Joseph A. Moglia, president of the corporate appellant, gave the following account: The licensed premises are located in a residential section of the Township. However, it is close to commercial areas located in the neighboring community of Brielle. Appellant first became the licensee at these premises on October 1, 1963, and the applications for the years 1963 through 1966 included, in addition to the interior, "grounds surrounding building" as part of the licensed premises. Prior to 1966 the outside grounds had not been used for the sale and consumption of alcoholic beverages.

Contemplating the erection of a patio on the licensed premises, he discussed the matter with Mayor Ehret who expressed disapproval of such proposed construction and operation thereon. Notwithstanding that, appellant proceeded to construct the patio in 1966. The construction was ninety per cent. completed at that time and was used only on Sunday afternoons in 1966. This patio, containing a bar, is located immediately behind the main building of the licensed premises, is equipped with thirty stools at the bar, and is surrounded by six picnic-type tables seating six persons around each table. A redwood stockade fence five feet high is constructed along some portion of the licensed premises and the area along the western border of the grounds is well shrubbed.

On cross examination, it developed that the installation of the outside bar, patio and stockade fence was made without the approval of the municipal officials; that no building permit had been secured; that in fact the construction and operation of an outdoor patio and bar are in direct violation of the existing zoning ordinance and building code. The witness further admitted that there has always been inadequate parking for the use of the regular patrons at these premises and that the condition resulted in numerous complaints made because of illegal parking by patrons of these premises.

The bar was put into active use, commencing in June 1967, on Friday nights, Saturday afternoons and evenings and Sunday nights. There was a considerable amount of illegal parking. He admitted also that complaints were made by residents because of amplifying equipment in use and group-singing involving as many as thirty-five patrons. The singing often continued until two to three o'clock in the morning. As a result of these complaints and conditions, the witness was aware of the fact that there were objections, but he was not informed of any "definite complaint about the outdoor bar." He was then asked:

> Q And you are also saying that you had not been informed at that time of the contemplated action of the governing body; is that correct?
>
> A Yes. We were informed then at the time.

And further:

> Q Mr. Moglia, I think we were talking about your having been called in by the Township Committee on

June 27th and I think you testified that you were told that there were some objections filed to the renewal, were you not?

A Yes, and I asked them what they were and there was nothing concrete on who or he is objecting on what manner.

Mayor Joseph N. Ehret, Jr., testifying on behalf of the Committee, stated that he had advised Moglia prior to the installation of the patio that the operation of an outside bar and patio would inevitably result in noise complaints from neighbors in this residential section. Notwithstanding that, however, the patio was constructed without his knowledge or the knowledge of or notice to the other members of the Committee.

He received numerous complaints from residents that a "boom boom" from the juke box was disturbing to the residents, particularly in the early hours of the morning. When the matter came on for renewal, the Mayor said that the Committee took into consideration the complaints of the neighbors both as to the noise and the parking congestion generated by a large volume of patrons. The complaints also included "lighting problems from the floodlights, excessive noise, and there had been one or two occasions of questionable hours of sale." In fact, this witness stated that he had discussed these problems with Moglia on four or five occasions in the presence of four other committeemen and at that time the committee members indicated that they were going to take action with reference to the outside grounds and premises which would serve the best interests of the community.

At the committee meeting, twenty-three objectors appeared and several spokesmen reflected their feeling in favor of the complained-of deletion as finally effected by the Committee's resolution. On cross examination, the Mayor vigorously asserted that he was not aware that the patio had been constructed in 1966 and in fact he "assumed that it hadn't been." Finally he insisted that the Committee's action was based upon its desire to eliminate the excessive noises emanating from this tavern at all hours and to promote the welfare of the community.

Emil Schuerman (who lives diagonally across from the licensed premises) stated that since appellant has owned the property, there has been a noise problem and unlawful parking on the part of its patrons resulting in numerous complaints made by him and other neighbors "to the Township and to the police." The situation was acutely aggravated since the construction of the patio and the recent activities thereon. He noted that on Friday, Saturday and Sunday evenings the loud noises start around eleven p.m.; "the main crowd seems to arrive over there approximately eleven o'clock, between eleven o'clock and two o'clock." There would be group singing of thirty or more persons joining in, and their voices carried over a considerable distance. On cross examination, the witness was asked whether he had ever made any complaint about the singing inside the premises. His answer: "I don't recall over making any complaints about inside. It can be heard, but it is subdued, and it is not that objectionable."

His testimony was corroborated by his wife, Vivian Schuerman, who stated that she called the police on numerous occasions to complain about the activities at these premises. She added that since June of this year, the juke box equipped with a microphone was located on the patio and "that juke box was a boom, boom, boom, boom. All the heavy reverberations of

the base would make your head bang together."

Mrs. Florence Costabile testified that the singing and noise often continued until three or four a.m. and she could hear the singing of the men and women in her bedroom. As a result of this, she made a complaint to the Police Department.

In analyzing the testimony and assessing the action of the Committee in imposing the stipulation of partial deletion of the licensed premises upon renewal of this license, it would be helpful to state the applicable legal principles pertinent to a determination hereof. The burden of proof in all these cases which involve discretionary matters where the applicant seeks a renewal of the license falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail (Crowley v. Christensen, 137 U.S. 86) and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester County, 50 Id. 585. No licensee has a vested right to the renewal of a license. Whether an original license should be renewed rests in the sound discretion of the issuing authority. Zicherman v. Driscoll, 133 N.J.L. 586. A license may be renewed for an area to be licensed in such manner as will serve the best interests of the community. The liquor business is one that must be carefully supervised and the common interest of the general public should be the guide post in the issuing and renewing of licenses. Blanck v. Magnolia, 38 N.J. 484.

From my evaluation of the testimony herein, it is abundantly clear that the Committee took into consideration the fact that the present operation, which included the outside grounds, subjected the residents to unnecessary noises and parking violations and was generally inimical to the health and welfare of the community. The Committee could have considered the unconditional unacceptability of the operation of the licensed premises in the light of the longstanding complaints of the neighboring residents of this tavern. It did not choose to do so, but merely limited the area to be licensed. Can it be seriously argued that property owners and residents in the immediate vicinity of this facility are not entitled to the enjoyment of peace and quiet late at night and in the early hours of weekend mornings? This grievance is the more justified because the licensed premises are located in a residential zone. The duty on the part of the Committee to these residents is clear. As the court pointed out in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, 322 (citing Ward v. Scott, 16 N.J. 16, 23):

> "Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480."

Over and above the considerations of the health and welfare of the community, and in addition thereto, the

Committee was aware of the fact that the construction of the patio and the operation of the outside bar were in patent violation of the existing zoning ordinance, which prohibits the same in a residential zone, as a non-conforming use.

Appellant's attorney maintains that the Committee should not have been influenced by the said zoning restriction in acting upon the said application, citing Lubliner v. Paterson, 59 N.J. Super. 419. He argues that "The extent of the [appellant's] non-conforming use will be a hearing unto itself and should not be a hearing within a hearing."

I do not conceive that this is the burden of Lubliner. In Lubliner, the court stated that, in order to comply with the zoning ordinance, the appellant therein may need a zoning variance before he could operate his tavern, "but he is not required to obtain it before the grant of the transfer" (59 N.J. Super. 433). Conversely, a fair interpretation of that language would be that the municipal issuing authority is not mandated or enjoined to issue the license, where the zoning proscription is apparent.

The Committee should not be required to enforce the Alcoholic Beverage Law in the abstract. Its actions are based upon the realities--here, the indisputable zoning restriction. Thus, Lubliner does not stand for the proposition that the Committee may not properly consider the application of zoning ordinances. While a local issuing authority and the Director have no jurisdiction either to approve or disapprove a zoning ordinance (Re Adams, Bulletin 70, Item 3), nevertheless proper consideration may be given to the existence of such ordinance in considering an application for license or renewal thereof. National Loan Society et als. v. Newark et al., Bulletin 1707, Item 1.

In appeals from municipal denial of retail license applications on a ground that the grant would have been in contravention of operative zoning ordinances, the denials were affirmed. Marra v. Cedar Grove, Bulletin 302, Item 15; Murchio v. Wayne, Bulletin 379, Item 7. See also Re Bardessono, Bulletin 266, Item 3, which held that since the operation of a limited winery business at a designated section would be in violation of the terms of the existing ordinance, "it is, therefore, clear that no license may properly be issued to authorize such conduct."

Appellant suggests that at a hearing before the zoning board, it may be granted a variance, or that the restriction may be set aside. This seems to me to be wishful thinking; in any event, it has no basis in present fact, upon which the Committee is obliged to operate.

As above stated, the renewal of a liquor license rests in the sound discretion of the issuing authority, and such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, supra. The Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1. Or, to put it in another way, where reasonable men, acting reasonably, determine that the license should not be renewed, the Director

should affirm such determination in the absence of a finding that "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

My careful consideration of all the evidence presented, the exhibits and the briefs submitted by counsel in summation, leads me to the inescapable conclusion that the Committee exercised its discretion circumspectly, reasonably and in the best interests of the community in renewing appellant's license for the current licensing year based upon the stipulation that the application be amended to delete the grounds outside the building.

It is therefore recommended that the Committee's action herein be affirmed and that the appeal be dismissed.

Conclusions and Order

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's report and argument in support thereof were filed by the attorney for appellant. Answers to the exceptions and written argument in support thereof were thereupon filed by the attorney for respondent.

After carefully considering the testimony, the exhibits, the Hearer's report, the exceptions thereto and written argument filed in behalf of appellant, and answering argument filed in behalf of respondent, I find the exceptions have either been considered by the Hearer or are unsupported in law or in fact. Hence, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22d day of November, 1967,

ORDERED that the action of respondent Township Committee of the Township of Wall be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

3. APPELLATE DECISIONS - LEVINE, LIFSCHITZ AND LEVINE v. PERTH AMBOY.

HERBERT LEVINE, BENNIE LIFSCHITZ, and ARTHUR LEVINE, t/a CORNER TAVERN,	)	
Appellants,	)	ON APPEAL CONCLUSIONS AND ORDER
v.	)	
BOARD OF COMMISSIONERS OF THE CITY OF PERTH AMBOY,	)	
Respondent.	)	

Alex Eber, Esq., Attorney for Appellants.
Francis M. Seaman, Esq., by Robert P. Levine, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from respondent's refusal to grant appellants' application for place-to-place transfer of their plenary retail consumption license from premises 432 Amboy Avenue and 341, 343, 345 Washington Street to premises to be constructed at 341, 343, 345 Washington Street, Perth Amboy.

Three of the five members of respondent voted to deny the application, one member being absent and one abstaining from voting in the matter.

Appellants' petition of appeal alleges that the action of respondent was erroneous for the following reasons:

> "(a) In the exercise of its power respecting transfers respondent had no authority to refuse to grant the transfer of applicants license for the reason upon which the refusal was based.
>
> "(b) The action of the respondent in denying the transfer was unreasonable, inequitable, arbitrary, improperly grounded, against the logic and effect of the presented facts and not in the public interest."

Respondent's answer denies the allegations contained in the petition of appeal and contends that the action was within its discretion and for the public welfare.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15, with opportunity for the respective parties to present witnesses in the matter.

The parties to this appeal are in substantial agreement with reference to the factual situation pertaining to the transfer of the license. It appears that the premises presently licensed consist of the tavern located in a building at the corner of Amboy Avenue and Washington Street, an adjacent parking lot for approximately sixteen cars with at the rear a row of garages, and a building located at 345 Washington Street, both latter structures being used for storage of alcoholic beverages. The building at 432 Amboy Avenue has been used as a licensed premises since 1936 and appellants, as partners, have held the license in question at the said premises since 1959. They propose to conduct their business in a building to be constructed, the storage garages and the grounds at 341-343-345 Washington Street, In effect, appellants are applying for deletion of 432 Amboy Avenue from the licensed premises.

The question to be resolved herein is whether the reasons relied upon by respondent in denying the transfer of the license are sufficiently valid to sustain its action. Apparently respondent's main reasons for the denial were that the owner of the premises at 432 Amboy Avenue is a widow and depends to a large extent on the rent received for use of the licensed premises to sustain her livelihood and that the premises used as a tavern cannot be used for any other purpose if respondent grants the transfer to the premises sought. Respondent also gave as a reason its obligation to prevent hardships on city residents.

The transfer of a liquor license to other persons or

premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. On the other hand, where it appears that refusal to transfer is arbitrary or unreasonable, the action denying the application will be reversed on appeal. Kelly v. Neptune City, Bulletin 1267, Item 2. In Bivona v. Hock et al., 5 N.J. Super. 118 (App.Div. 1949), the court, among other things, stated:

> "... the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup.Ct. 1940)."

The court further pointed out that:

> "... the Legislature has not sought to delegate unlimited 'discretion' to these agencies, but rather has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on the basis of any and all factors which pertain to the political issue of prohibition."

In Bivona the court reversed the decision of the Director affirming denial by the local issuing authority of an application for place-to-place transfer diagonally across the street from the original premises. In the case sub judice the premises sought for transfer are to be constructed at a location already licensed.

The matter of place-to-place transfers has also been considered in cases somewhat comparable to the one under consideration. Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1; Grower v. Hackensack, Bulletin 789, Item 1; Costa v. Verona, Bulletin 501, Item 2. In the latter case the then Commissioner stated:

> "Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained."

Although the transfer of the license to the new premises, when constructed, may be a hardship on the landlord of the building where the tavern is now located, such reason in itself cannot be accepted for denying appellants' application. Cf. Metropolitan Liquor Corporation v. Jersey City, Bulletin 645, Item 1; Lachow v. Alper, 130 N.J.Eq. 588.

Under the facts and circumstances appearing herein, it is my opinion that respondent's denial of the application for place-to-place transfer in question was unreasonable, arbitrary and an abuse of discretion. I recommend that its action be reversed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the transcript, including the oral argument of counsel contained therein, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. I find that the denial of the transfer of appellants' license was unreasonable. The action of respondent will, therefore, be reversed. Piccirillo v. Lyndhurst, Bulletin 1578, Item 3; aff'd Moderelli and Lyndhurst v. Piccirillo and Division of Alcoholic Beverage Control (App.Div. 1966), not officially reported, recorded in Bulletin 1662, Item 1.

Accordingly, it is, on this 21st day of November, 1967,

ORDERED that the action of respondent be and the same is hereby reversed; and it is further

ORDERED that respondent transfer the said license upon completion of the premises in accordance with the plans submitted with appellants' application.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRED O. WANKMULLER, INC.)
t/a Monterey Hotel) CONCLUSIONS
111 Madison Avenue) AND ORDER
Lakewood, N. J.)

Holder of Plenary Retail Consumption License C-19 issued by the Township Committee of the Township of Lakewood)

John R. Rutledge, Jr., Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 28, 1967, it permitted the playing of a card game for money stakes, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Chaled, Inc., Bulletin 1758, Item 3.

Accordingly, it is, on this 11th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-19, issued by the Township Committee of the Township of Lakewood to Fred O. Wankmuller, Inc., t/a Monterey Hotel, for premises 111 Madison Avenue, Lakewood, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, December 18, 1967, and terminating at 2:00 a.m. Thursday, December 28, 1967.

Joseph M. Keegan
Director