STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
P.O. BOX 2039
U.S. ROUTE 1-9 (SOUTHBOUND), NEWARK, N. J. 07114

BULLETIN 2286 June 14, 1978

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ITEM

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1. APPELLATE DECISIONS - CHIAFULLO v. LONG BRANCH.

Anthony Chiafullo, t/a Tony's Tomato Pies, Appellant,	:	ON APPEAL
v.	:	CONCLUSIONS AND ORDER
City Council of the City of Long Branch, Respondent.	:	

John A. Golden, Esq., Attorney for Appellant.
Piltzer and Piltzer, Esqs., by David S. Piltzer, Esq., Attorneys for Objectors.
Robert L. Mauro, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the City Council of the City of Long Branch (hereinafter Council) which, on January 25, 1977, denied appellant's application for a place-to-place transfer of Plenary Retail Consumption License C-11, from premises 251 Morris Avenue to 228 Morris Avenue, Long Branch.

The Council's resolution does not recite the reasons upon which the denial is predicated. The Council merely failed to pass a resolution granting the requested transfer by a vote of three to two.

The appellant in his Petition of Appeal contends that the Council's action was erroneous for the following reasons: (1) It was unreasonable, arbitrary and an abuse of its discretion; (2) the transfer would be in the public interest and welfare; (3) the denial was without legal reason or foundation in fact or law; (4) the transfer would result in improving conditions in the area and of benefit to the inhabitants; (5) the denial was made or influenced by bias or prejudice; and (6) Chapter VIII of the Revised Ordinances of 1910 of Long Branch is unconstitutionally vague and without sufficient standards and guidlines, and is otherwise unreasonable and confiscatory.

The Council did not file an answer herein or appear at the hearing. It did, however, submit a copy of the transcript of the Hearing before the Council, pursuant to Rule 8 of State Regulation No. 15.

The pertinent section of Chapter VIII referred to in appellant's Petition of Appeal and upon which his transfer application is based, is 8-4.2(a), which provides as follows:

> 8-4.2 Proximity to Existing Licensed Locations.
> (a) No license for the retail sale of alcoholic beverages for consumption on or off the licensed premises, excepting renewal licenses for the same premises which have been previously licensed and transferred from person to person, shall be granted or transferred to other premises within a distance of 1,000 feet of any existing licensed premises. Notwithstanding the foregoing, in the event the licensee, and only the licensee, shall desire to transfer his license to another premises, he may be permitted to do so at the discretion of the city council, but the transfer to new premises shall be limited to a distance of not more than 300 feet from the licensed premises from which the transfer is sought. This exception shall not be construed to authorize any other transfer except in compliance with the 1,000-foot distance limitation aforementioned. The distances shall be measured in the same manner as that required by statute for the measuring of distances between licensed premises, schools and churches.

The distance limitations are derived from ordinances adopted in August and November, 1963.

On March 8, 1977, the Council adopted Section 8-4.2(e) over the veto of the Mayor on February 24, 1977. Section 8-4.2(e) provides:

> Transfers of liquor licenses under subsections 8-4.2, a through c shall mean transfers made in good faith, and not designed or sought to circumvent the requirements of the aforesaid subsections. The City Council may disapprove a transfer which it judges not to be made in good faith, or one designed or sought to circumvent the requirements of the aforesaid subsections.

A de novo hearing was held in this division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

The record discloses that the appellant has been conducting his licensed establishment at 251 Morris Avenue since the Fall of 1975, as a result of a prior grant of a place-to-place transfer from premises at 261 Morris Avenue. This transfer application was the subject of an appeal to this Division, wherein the Director reversed the action of the Council which had denied same. Chiafullo v. Long Branch, Bulletin 2201, Item 1.

The Director ruled therein that, the action of the Council in denying the transfer from 261 Morris Avenue to 151 Morris Avenue (a distance of 181 feet) was erroneous. There was no substantiation presented in support of the reasons set forth in the resolution of denial.

Councilmen Cofer, Woolley and Belger, all of whom voted against the proposed transfer sub judice, testified at the de novo hearing. Each stated that they felt it was Chiafullo's intent from the beginning, to transfer the license from its original location, 261 Morris Avenue, to his existing restaurant at 228 Morris Avenue, since the distance involved (over 300 feet) would have violated the Ordinance, he therefore chose to accomplish it in two steps of less than 200 feet each.

Additionally, they testified that they were concerned that this proposed second transfer would create a cluster of licenses in the area of 228 Morris Avenue, a situation the Council wanted to avoid.

The minutes of the meeting of the City Council held on January 25, 1977 make it clear that the appellant knew that these were the grounds upon which the transfer was denied.

The testimony of Councilman Woolley also indicates that, following the council meeting of January 25, 1977, he went to Casey Jones' Restaurant, where he met with several of the local liquor licensees who had testified in opposition to the granting of the application in issue.

The application for place-to-place transfer of the subject license has been denied by the Council. The burden of establishing that its action was erroneous and should be reversed rests with appellant. Rule 6 of State Regulation No. 15.

It has been consistently held that no one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1956); Biscamp v Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

The decision as to whether or not a license will be transferred to a particular locality rests, in the first instance, within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, et al., Bulletin 997, Item 2. A local issuing authority has been held to possess wide discretion in the transfer of a liquor license, subject of course, to review by this Division in the event of abuse thereof. Passarella v. Board of Commer's, Atlantic City, 1 N.J. Super. 313 (App. Div. 1949); Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962).

The Director should not substitute his judgment, on appeal, for that of the local Board, or reverse the ruling, if reasonable support for it can be found in the record. Lyons Farms Tavern, Inc. v. Mun. Bd. Alc. Bev., 55 N.J. 292 (1970).

The issue thus presented is: Did the Council act reasonably in the exercise of its discretion in denying approval of the transfer? Was the intent ascribed to the applicant, i.e., a preconceived two step transfer procedure to circumvent the Ordinance, and the basis of denial, proper under the circumstances?

The amendment to the Long Branch ordinance, Section 8-4.2(e), was adopted during the pendency of this appeal and expressly incorporates into

into the subject Ordinance a good-faith requirement. This amendment constitutes part of the applicable law of the case in the Division's resolution of the appeal. W. C. Three, Inc. v. Tp. Comm. of Washington Tp, 142 N.J. Super. 291 (App. Div. 1976).

See also, Walker v. N.J. Dept. of Institutions and Agencies, 147 N.J. Super. 485, 489 (App. Div. 1977), wherein the following was held:

> There is no longer any question that a court decides an appeal with reference to the state of the law at the time of resolution of the appeal. (Citations omitted). No sufficient reason has been advanced to absolve administrative bodies, exercising quasi-judicial functions, from similarly deciding appeals in the context of the law as it exists at the time the administrative appeal is decided.

The testimony discloses that after the Conclusions and Order of August 1975, appellant signed a six months' lease for premises 251 Morris Avenue, and made minimum repairs before moving into the building. Whether or not the Council possessed this information at the time of its hearing in January 1977 is not known, nor is it conclusive as to appellant's intent. It does constitute an additional fact upon which a reasonable person could, together with other information, arrive at a finding of intent and good faith or the lack thereof.

The three councilmen who testified all stated that, because their then legal advisor ruled that they could not go into intent as it was then speculative, at best, they still voted "no" regarding the first application for a place-to-place transfer by appellant in August 1975, and ascribed other reasons for their decision. They believed at the time that Chiafullo intended to move the license to the restaurant, and this was the true basis of their negative vote. When the current application came before them in January, 1977, they felt vindicated.

While there may have been a sound legal basis in ruling that the councilmen could not properly consider the appellant's intent at the time of the August 1975 hearing, as it was essentially speculative, the factual basis had dramatically changed at the time of the January 1977 hearing. The councilmen properly found that intent and good faith were proper issues in arriving at a determination.

The Council's decision was reasonably based upon the facts then before it, and I find that its determination is reasonable.

As stated previously, under these circumstances, the Director should not substitute his judgment on appeal for that of the local issuing authority. It is especially true in this appeal, as the granting of the transfer is discretionary, not obligatory, under the subject ordinance. See Yurchak v. Jersey City, Bulletin 1974, Item 1, affirmed by the Appellate Division of the Superior Court on April 19, 1972 in an unreported opinion recorded in Bulletin 2046, Item 1, and also the subject of a supplementary order on a request for rehearing dated December 11, 1971.

In the Yurchak case, it was expressly held in an analogous situation that good faith of the applicant was a relevent consideration in a transfer application. The Director reversed the grant of the second transfer by the local issuing authority upon his finding that there was an absence of good faith on the part of the applicant. It was held that the transfers therein were a "subterfuge and scheme to obtain a transfer" in two steps, when such transfer could not be obtained under the ordinance in one.

Having found that the denial of the application by the Council, based upon intent and good faith, was reasonable, the issue of "clustering" becomes moot.

Similarly, it is unnecessary to consider the appellant's claim that the transfer would result in improving conditions in the area and be of benefit to the inhabitants.

I further reject the claim of the appellant of bias or prejudice based solely upon one councilman, who voted against the transfer, having visited a licensed restaurant after the vote, and having socialized with several of the objectors he met there. A close examination of the record reveals no bias, prejudice, impropriety or conflict of interest on the part of the councilman.

Appellant must demonstrate not only the impropriety of this councilman's actions, but also some harm arising from that impropriety. While a reversal is not here warranted, a public official should be more sensitive to the probability of an appearance of impropriety than was this councilman. In this respect he demonstrated an absence of foresight and judgment.

I find that the allegation that "Chapter VIII of the Revised Ordinances of 1910 is unconstitutionally vague and without sufficient standards and guidelines, and is otherwise unreasonable and confiscatory" is devoid of merit. No agreement was addressed to this point in the three day de novo hearing, and absent proof to the contrary, the ordinance is presumptively constitutional. Hutton Pk. Gardens. v. West Orange Town Council, 68 N.J. 543, 564 (1975).

It is, therefore, concluded that the appellant has failed to sustain his burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the Council be affirmed, and the appeal be dismissed.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the Appellant, and written Answer to said Exceptions was filed by counsel for the Objectors, pursuant to Rule 14 of State Regulation No. 15.

In his Exceptions, the appellant alleges a denial of fair, unbiased and reasonable treatment by the Council, and requests that the Director undertake an investigation of the Council. Other than referring to a reported New Jersey Superior Court case involving a "conflict of interest" situation, which issue was correctly resolved in the Hearer's Report, no factual basis for the allegations is set forth. My review of the record does not support the bare categorical allegation of appellant and, therefore, I find these Exceptions to be without merit.

I also reject appellant's Exception in which he contends that the granting of an adjournment of a scheduled hearing in this Division was an improper delay tactic by objectors to gain time to permit the passage of amendatory legislation by the local issuing authority. The amendatory legislation was only a codification of existing case law, which would have been applied on appeal; and said amended legislation further constitutes part of the applicable law of the case in the Division's resolution of the matter. Walker v. N.J. Dept. of Institutions and Agencies, supra at 489.

The balance of the appellant's Exceptions have been either considered and correctly resolved in the Hearer's Report, or are devoid of merit.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the written summations and legal memoranda of the parties, the Hearer's Report, the Exceptions filed thereto, and the Answer to the said Exceptions, and I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 9th day of January, 1978,

ORDERED that the action of the respondent City Council of the City of Long Branch be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - TOMSON v. NEW BRUNSWICK.

Ants Tomson, Appellant, v. City Council of the City of New Brunswick, Respondent.	ON APPEAL CONCLUSIONS and ORDER

Peter A. Berman, Esq., Attorney for Appellant.
Gilbert L. Nelson, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the respondent, City Council of the City of New Brunswick (hereinafter Council) which, on June 15, 1977, denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Distribution License D-6, from Troi-Mart, Inc. to appellant and from premises 280 Suydam Street to 335 George Street, New Brunswick.

In his Petition of Appeal, appellant contends that the action of the Council is erroneous because it was arbitrary and contrary to the weight of the evidence adduced at the hearing before it. This contention is denied by the Council.

A de novo appeal was heard in this Division, pursuant to Rule 6 of State Regulation No. 15, with full opportunity provided the parties to introduce evidence and to cross-examine witnesses.

The appellant, Ants Tomson, testified that he is the husband of Anino Tomson, a pharmacist who operates a pharmacy at the proposed transfer location, 335 George Street, New Brunswick. Although he is a civil engineer employed by the City of New York, he does assist his wife in the management of the store, particularly during nights or weekends.

He described the proposed use of the license by indicating that about one-sixth of the store would be transformed into a package goods area, and the employees of the pharmacy would sell the alcoholic beverages along with items presently sold therein. Certain items would no longer be carried or re-

located, in order that adequate space would be provided for the package goods sales. He averred that he is owner of a one-half interest in the pharmacy, and that there is adequate parking facilities at the rear of the store and in the large public parking lots, a half block away.

Appellant's wife, Anino Tomson, testified that she is a registered graduate pharmacist, operates the pharmacy and, through her employees, would sell the alcoholic beverages in the proposed package section of the store. The premises are near to a Church, but a waiver of the distance limitation has been obtained. It was her view that the sale of alcoholic beverages for off-premises consumption would be an advantage to the public who shop in the area and who could benefit from a proposed delivery service.

The Council relied entirely upon its resolution adopted on June 15, 1977, denying the application. No mention is made with respect to the person-to-person aspect of the transfer application, and accordingly, must be deemed denied. That Resolution provides in relevant part, as follows:

> WHEREAS, objections to such transfer have been received by this Council, in the form of a petition signed by a number of individuals and groups, as well as, a letter of objection from the New Brunswick Tavern Association, Inc.;
>
> NOW, THEREFORE, BE IT RESOLVED, by the Municipal Council of the City of New Brunswick, that the application of Ants Tomson, for the transfer of Plenary Retail Distribution License #D-6, be disapproved since this Council feels that such a transfer to a new location at 335 George Street, New Brunswick, New Jersey, would be contrary to the health, safety, and general welfare of the community, due to the combined use of the site as a pharmacy and liquor store, and due to this Governing Body's reluctance to transfer the liquor license, be it consumption or distribution, into the four (4) block area of George Street, bounded by Albany Street and Livingston Avenue, where the primary function is one of dispersing alcoholic beverages rather than merely acting as a secondary service to accomodate patrons of a restaurant; and further due to the increased traffic congestion in the area, as well as, lack of parking, particularly, with references to the delivery of products necessary for the operation of the Plenary Retail Distribution License #D-6 as well as, customers stopping to make purchases.

This Resolution was expanded upon in the Council's

Answer as follows: "The Municipal Governing Body has also shown a marked practice over the past fifty (50) years in the City of New Brunswick with regard to a reluctance to transfer liquor licenses be it consumption or distribution, into the four (4) block area of George Street, bounded by Albany Street and Livingston Avenue, where the primary function is one of dispersing alcoholic beverages..." This contention, advanced by the Council in its Answer and referred to in its Resolution, was not controverted by appellant.

The burden of establishing that the Council acted erroneously and should be reversed rests entirely upon the appellant, pursuant to Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949); Hudson-Bergen Package Stores Ass'n v. North Bergen, Bulletin 1981, Item 1.

There is no inherent or automatic right to the transfer of an alcoholic beverage license. In the absence of abuse of discretion in acting upon a license issuance or transfer, the action of the authority should not be disturbed by the Director of this Division. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947). The action of the Council may not be reversed in the absence of manifest mistake or other abuse of discretion. Florence Methodist Church v. Florence Twp., 38 N.J. Super. 85 (App. Div. 1965).

Each municipal issuing authority has wide discretion in the transfer of a liquor license. Michida Corp. v. Jackson, Bulletin 2250, Item 4. Action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962); Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970), ("The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action.").

It is apparent that the Council made its determination not to approve the transfer because it did not consider the proposed location served the public interest. It listed several reasons to buttress its belief, some of which reasons in and by themselves had little, if any, merit.

However, as above indicated, the principal basis for its action was apparent. It did not consider a liquor vending facility in a pharmacy a beneficial location for the license; and such transfer would conflict with its long standing policy against primary retail sales in this locale. Absent improper motives, which are not alleged here, such conclusion should not be disturbed. The controlling principle herein is that the Director's

function on appeal is not to substitute his personal judgment for that of the local issuing authority. Fanwood v. Rocco, supra; Brick Church Pub v. East Orange, Bulletin 2232, Item 4.

I conclude that the appellant has failed to sustain the burden imposed upon him under Rule 6 of State Regulation No. 15 of establishing that the action of the Council was erroneous and should be reversed.

It is, therefore, recommended that an Order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the written Summation of appellant, the written Reply thereto of the Council, and the Hearer's Report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of January, 1978,

ORDERED that the action of the respondent City Council of the City of New Brunswick be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner
Director

3. APPELLATE DECISIONS - DAVIS-LIPPINCOTT AMERICAN LEGION POST #307 v. MEDFORD.

Davis-Lippincott American Legion Post #307, Appellant, v. Township Committee of the Township of Medford, Respondent.	ON APPEAL CONCLUSIONS and ORDER

James Logan, Jr., Esq., and Frederick H. Beals, Esq., Attorneys for Appellant.
Thomas Norman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Township Committee of the Township of Medford (hereinafter Committee) which, by resolution of August 3, 1977, denied appellant's application for a place-to-place transfer of its Club License, CB-1, from its present location at Stokes Road to 48 South Main Street, Medford.

Appellant in its Petition of Appeal contends that the action of the Committee was arbitrary and unreasonable. The Committee in its Answer denies this contention and avers that its resolution properly articulates the reasons upon which its decision was based.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. Additionally, by stipulation of counsel, various exhibits were admitted into evidence, including a tax map, survey of property, zoning map and copy of Deed description; all relating to the proposed premises.

From explanatory remarks of counsel, supported by testimony of appellant's witnesses, consisting of its President (Commander), Secretary (Adjutant), a bartender and an Engineer retained by appellant to prepare a survey offered for evidence, it is uncontroverted that the appellant is the holder of a club license presently located in a rented building some distance from the proposed site.

The owner of the building appellant currently leases has served notice upon appellant that it must vacate the prem-

ises. In consequence thereof, the appellant acquired premises owned by the New Jersey Bell Telephone Company. It is to that site that appellant applied for the place-to-place transfer.

The Committee produced testimony of three neighbors of the proposed transfer situs, each of whom expressed opposition to the proposed use. Their objections were essentially stated in the resolution adopted by the Committee denying appellant's application. That resolution in part declared:

> 4. All of the dwellings surrounding the proposed site are occupied as residential dwellings with the exception of the ice cream parlor and the dwelling adjoining it. However, both of these residential structures are used by the owners for residences and also for limited commercial use; to wit: an ice cream parlor and insurance office.
>
> 5. Because of the unusual location of the proposed site behind the ice cream parlor which deals mostly in young to very young persons and because the only means of ingress and egress is through a narrow alley passing adjacent to the ice cream parlor and residential unit, the Township Committee finds that permitting liquor consumption on the proposed premises would constitute an inherently dangerous situation with respect to safety. This is further compounded by virtue of the inadequate on-site parking facilities.
>
> 6. The Township Committee also finds that the proposed location is situated in the midst of an essentially residential area with some accessory commercial uses of a limited nature. The proximity of the proposed club to this established residential area will cause an adverse impact on the general welfare of the neighborhood due to noise, parking congestion and traffic.

None of the testimony offered was significantly controverted. From it and the documents accepted into evidence, it appears that the issue herein is narrowed to a determination whether or not the land and building selected by the appellant for its future home would or would not be beneficial to the public. Appellants feel that it would, and the Committee is sure that it would not.

Initially, it is observed that there is no inherent or automatic right to the transfer of an alcoholic beverage license. The issuance of a retail liquor license, in the first instance, rests within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, Bulletin 1981, Item 1; Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Biscamp v. Township Council of the Tp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949). In an absence of abuse of such discretion, the action of this authority should not be disturbed by the Director of this Division. Hudson-Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947). The action of the Committee may not be reversed in the absence of manifest mistake or other abuse of discretion. Florence Methodist Church v. Tp. Committee, Florence Tp., 38 N.J. Super. 85 (App. Div. 1955).

However, when the municipal action is unreasonable or improperly grounded, the Director may grant such relief or take such action as is appropriate. Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561 (App. Div. 1965).

Where a municipal issuing authority determines to reject a site of a transfer application to an area which the municipality wishes to be free from liquor establishments, its determination will not be altered on appeal by the Director, following his settled practice not to substitute his opinion for that of the municipal board. Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 68 N.J. 44 (1975).

Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director who may reverse its action in the event of any abuse thereof. However, action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962); Fanwood v. Rocco, supra; Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292, 303 (1970) in which it was held: "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action.

According to a copy of the Zoning map provided, the subject premises are located in a commercial zone about two thousand feet long, bisected by South Main Street and with a depth of about five hundred feet. The building on appellant's premises, formerly used by the New Jersey Bell Telephone Company as a "switching" station, is quasi-industrial. It also housed repair trucks which gained entrance and egress by way of what is described as a right-of-way over lands lying between the building and South Main Street. The survey supplied indicates that this right-of-way, although ten feet in width, has

a portion of the neighbor's garage upon it, so its width is diminished to about five feet. Hence, to use the right-of-way requires vehicles to traverse the subject property and further requires the neighboring owner to use a portion of the subject lands.

It is apparent that the Committee arrived at its determination not to approve the transfer principally because it did not consider the proposed location served the public interest. It listed several reasons to buttress its belief, some of which reasons in and by themselves had little if any merit.

However, as above indicated, the principal basis for its action was apparent. It did not consider a club license in that location a beneficial one for the Township. In its view, such location, in consideration of all aspects, would not benefit the public.

Absent improper motivation by the Committee, which is not alleged here, such action should not be disturbed. The controlling principle herein is that the Director's function on appeal is not to substitute his personal judgment for that of the local issuing authority where the issuing authority could reasonably have made that judgment. Fanwood v. Rocco, supra; Michida Corp. v. Jackson Tp., Bulletin 2250, Item 4; Brick Church Pub v. East Orange, Bulletin 2232, Item 4.

I conclude that the appellant has failed to sustain the burden imposed upon it under Rule 6 of State Regulation No. 15, of establishing that the action of the Committee was erroneous and should be reversed.

It is therefore, recommended that an Order be entered affirming the action of the Committee and dismissing the appeal.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the appellant, and written Answer was filed thereto by the respondent, pursuant to Rule 14 of State Regulation No. 15.

In its first Exception, the appellant asserts error in the failure of the Committee to provide reasoning for its determination until the submission of a Resolution with its Answer to the Petition of Appeal.

Rule 10 of State Regulation No. 6 requires the issuing authority to state the reasons for its denial of an application for a transfer of a license. The proper procedure is to set forth these reasons at the time of determination. While this deviation is not condoned, the filing of the Resolution of the Township

Committee, setting forth its basis, is in conformity with Rule 4 of State Regulation No. 15. The de novo appeal in this Division rectifies this procedural defect. Accordingly, I find this Exception and request for remand to be without merit.

In its next Exception, the appellant advances its arguments against the six findings of the Committee in its Resolution which denied the application for transfer of appellant's club license.

While the finding in the Resolution that the subject premises cannot be used by appellant for the intended use because of applicable zoning regulations is not supported by the record, this finding, as well as the issue of number of modes of ingress and egress to the premises, is not, in and of itself, a basis for reversal. The Hearer did not find the former as a fact, and there is no basis for the conclusion advanced by appellant that this application was decided erroneously on zoning issues. Thus, this aspect of the second Exception also lacks merit.

The balance of the arguments contained in the second Exception have been previously set forth in the written summation of appellant and have been either fully considered and correctly resolved in the Hearer's Report or are without merit.

In its last Exception, the appellant seeks to discredit the testimony of the Committee's witnesses, who, it is contended, are so personally involved as to lack any credible basis for finding that their testimony could be equated with the general welfare of the municipality. I find that the testimony of the Committee's witnesses at the de novo hearing comports with the general factual findings of the Committee. I, further, find that an independent basis exists for the Committee's findings, particularly in the Traffic Division report of July 5, 1977 as well as in the physical location of the subject premises. Thus, I reject this Exception as without basis.

The determination sub judice does not devolve upon a comparison of the prior use of the proposed transfer situs to its use as a club licensee. Different considerations exist in comparing a general commercial business enterprise with one that serves alcoholic beverages. Certain factors may be similar, but an issuing authority has greater discretion in evaluating those factors it deems critical in determining whether to grant a place-to-place transfer of a liquor license.

I find that reasonable support for the action of the Township Committee exists in the record before me. In such situations, my function is to affirm. Margate Civic Assoc. v. Bd. of Comm'rs., Margate, 132 N.J. Super. 58, 63 (App. Div. 1975).

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summations of the parties, the Hearer's Report, the

written Exceptions filed by the appellant, and the written Answer thereto, filed by the Committee, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 13th day of January, 1978,

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

Joseph H. Lerner
Director