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Amendments to the Alcoholic Beverage Control Law: A Potent Land Use Tool to Fight Late-Night Clubs & Discos

by Barry Mallin[1]

Local community groups in New York City have discovered a powerful weapon in the escalating battle over the siting of new night-clubs and discotheques in residential neighborhoods. The conflict pits the rights of club owners to open wherever zoning laws permit against the opposition of local residents who fear the adverse impact of after-midnight crowds, noise and traffic.

The battle is being played out, not over zoning laws as one might expect, but over a 1993 amendment to the state Alcoholic Beverage Control Law ("ABCL"). Known as the Padavan Law after one of its sponsors, Sen. Frank Padavan, the amendment for the first time gave to local communities a right to have their views considered on certain liquor license applications submitted to the State Liquor Authority ("SLA").[2]

Determining the Public Interest

The statute spells out the factors to be considered by the SLA in determining the public interest. Moreover, the law bars the SLA from granting an on-premises liquor license to any establishment located within 500 feet of three or more existing licensed premises, except if the SLA finds, after consultation with the local community board, that the granting of such license would be in the public interest. The statute requires the SLA to conduct a public hearing in 500-foot cases and to state the reasons for its findings.

The relevant sections of the ABCL were amended in 1993 to strengthen and broaden the SLA's ability to consider the impact that the issuance of a proposed liquor license would have on local communities. In a memorandum in support of the bill, another sponsor, Assemblyman G. Oliver Koppell, wrote that the amendment was "necessary to assure that quality of life impacts are fully incorporated into the responsible state decision-making apparatus."[3] Toward this end, the ABCL specifies certain criteria to be considered in determining the public interest, including the number of licensed premises in the area, traffic, parking, noise and any other factors specified by law or regulation that are relevant to determine the public interest of the community.[4]

The law in effect requires the SLA to undertake a community impact analysis when dealing with a contested application. The impetus for the change was a 1980 Court of Appeals case[5] which held in a 5-2 decision that the SLA did not have the statutory right to deny a license because of potential adverse community impacts from noise, parking and traffic that may be generated by an establishment otherwise permitted by zoning. The majority declared that such quality-of-life issues are for the consideration of zoning authorities, not the SLA. Notwithstanding that the applicant was seeking to open what was described as the largest discotheque in New York City, accommodating more than 1400 people, in a mixed-use neighborhood containing a substantial residential population, the Court said that a "more explicit indication of legislative intent...would be required" before the SLA could consider community concerns in licensing determinations.

The 1993 legislation made clear that adverse community impact is a legitimate issue in licensing proceedings.

Turning a Deaf Ear

The SLA, however, initially ignored this mandate and turned a deaf ear to community complaints about the oversaturation of bars, clubs and discotheques. That is, until 1996 when the Sobo community in lower Manhattan took the SLA to court after the agency granted a liquor license to a discotheque with a capacity of several hundred patrons. The

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SLA granted this license despite the existence of 22 bars within 500 feet of the discotheque and the fact that the application was opposed by the local community board, hundreds of residents, community groups, galleries and other businesses and by the local elected officials.

In granting the license, the SLA issued a one-sentence determination that the license was in the public interest because the proposed establishment would generate employment and tax revenues. Neighborhood groups and residents filed an Article 78 proceeding seeking a reversal of the agency's determination.

Justice Sheila Abdus-Salaam of the Supreme Court, New York County, ruling in favor of the community in a 1997 decision, declared that the "one-sentence general conclusion that a liquor license will generate employment and tax revenues does not constitute 'reasons' why *this* particular license at *this* particular location is in the 'public interest' ". The Court annulled the license and found that the SLA's failure to specify reasons was an error of law, arbitrary and capricious and an abuse of discretion."

The Court criticized the agency for not engaging in a balancing of the possible benefit to the public from more jobs and taxes as opposed to the possible detriment to the community by adding another licensed premises to an area already saturated with such establishments.

Nor did the SLA, the Court said, give any heed to the grounds for the community opposition, including expert acoustic and traffic reports showing that a club with dancing would increase noise levels in adjacent residential apartments to levels exceeding the City's Noise Code and would generate unduly large amounts of traffic on a narrow cobblestoned street.

If the SLA's interpretation of "public interest" was correct, Justice Abdus-Salaam warned, then the 500-foot law would become "wholly eviscerated and rendered a dead letter." The legislature enacted the law, the Justice said, to alleviate the problems caused by the oversaturation of neighborhoods by late night bars and clubs. "The Authority is duty bound to enforce the statute consistent with legislative intent—and not to enter into a strained, tortured and irrational interpretation to pursue its own administrative and extra-legislative fiscal policy," the Justice concluded.

The 1997 decision proved to be a turning point for neighborhood associations struggling against the deleterious effects of over-concentration of late night bars, clubs and discotheques. In recent licensing proceedings, the SLA now is taking a hard look at the quality-of-life factors set forth in the Padavan Law when those issues are raised by local community boards and neighborhood groups and residents. In the past two years, the SLA has turned down a number of applicants based upon community concerns regarding oversaturation of bars and clubs and increased late-night noise and traffic on residential streets.

This turnabout by the agency has produced an ironic circumstance that no community advocate previously would have thought possible. In another recent Supreme Court case in New York County, a community organization in Tribeca joined forces with the SLA by intervening in an Article 78 proceeding brought by a discotheque owners seeking to overturn the agency's denial of its liquor license application.[1]

The club owner was seeking a liquor license for an

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800-patron dance club that shared a party wall with a 165-unit residential condominium and was located near other residential buildings. In this matter, the SLA concluded that approval of the application would not be in the public interest in view of the maximum occupancy of the premises, its hours of operation, the number of liquor licenses already issued in the area, the anticipated traffic congestion and the concerns expressed by the residents.

In its Article 78 proceeding, the club owner asserted that there was insufficient evidence before the SLA to establish that any of the statutory factors under the ABCL could serve to deny the license application and that the agency's determination was based upon speculation, factual errors and community pressure.

In a decision handed down in February of this year, Justice Franklin Weissberg agreed with the SLA and the community intervenors. He reasoned that "the size and nature of the operation will inevitably cause street noise and traffic that will adversely impact upon this increasingly residential neighborhood. It was certainly rational for the Authority to conclude that the magnitude, hours and nature of the proposed operation made it sufficiently likely that the club would disrupt the lives of the many nearby residents so as to warrant the denial of the application."

Indeed, the Justice said, "it is hardly speculative to conclude that it is likely that lines of people will form waiting to enter the club, that lines of cars will be created dropping parties off or waiting for them to exit, that taxis will hover in anticipation of customers and customers will stand outside the premises hailing taxis, and that patrons of the club will make their presence known as they leave and head towards their cars, all of which will occur as late as three-thirty in the morning. Even if these customers are not rowdy, they will necessarily disrupt the peace and quiet the neighborhood residents are entitled to enjoy."

In reviewing the legislative history of the 1993 ABCL amendments, Justice Weissberg concluded that the Legislature "made it clear that the impact upon the community should be of paramount concern to the Authority with respect to the issuance of section 64 liquor licenses."

In another recently decided case, the Appellate Division, First Department, weighed in on the debate over the Padavan Law when it was called upon to decide the collateral issue of whether the transfer of an existing license to a new owner triggered the public hearing requirements of the statute.[8]

This Article 78 proceeding, brought by a community association, was transferred by the Supreme Court directly to the Appellate Division on the ground that it presented a question of substantial evidence under CPLR 7804(g). Although the Appellate Division disagreed that the petition raised such a question, it nevertheless retained jurisdiction to decide all of the issues.

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The SLA argued that the public hearing requirements were inapplicable in this matter because it involved the transfer of a license, rather than the issuance of a new license. The Court rejected this argument, ruling that ABCL §64 is not limited by its language to the issuance of new licenses. The Court said that the law "makes no exception for licenses issued pursuant to either renewals or transfers." The Court explained that it could not "discern any logical reason why the public should not have the same right to a hearing on the impact of the transfer of a license from one proprietor to another as it has on the impact of a license for previously unlicenced premises."

Even though it may be conducted on the same physical premises, the proposed transferee's business, the Court said, "may have a decidedly different impact on the neighborhood and may compel a different finding as to the public interest." The Court annulled the license and remanded the matter back to the SLA for further proceedings consistent with the Padavan Law.

A body of law is beginning to develop over the 1993 amendments to the ABCL. The issue of where particular types of businesses should be sited is usually reserved to zoning experts and practitioners, but this little known law is proving to be a potent land use weapon for local community organizations striving to maintain the quality of life of their residents.

Endnotes

[1] Barry Mallin is a partner in the law firm of Mallin & Goldstein.

[2] ABCL §64 (subd. 6-a) & (subd. 7(b) & (f).

[3] 1993 Legis Ann 515 (Memorandum of Assemblyman G. Oliver Koppell).

[4] ABCL §64 (subd. 6-a).

[5] *Circus Disco Ltd. v. New York State Liquor Authority*, 51 N.Y. 2d 24, 431 N.Y.S. 2d 491 (1980).

[6] *Soho Community Council v. New York State Liquor Authority*, 173 Misc. 2d 632, 661 N.Y.S.2d 694 (N.Y. Sup. 1997).

[7] *Bowery Room Corporation v. New York State Liquor Authority*, 2000 WL 433558 (N.Y. Sup).

[8] *Cleveland Place Neighborhood Association v. New York State Liquor Authority* (Appellate Division, First Department), NYLJ (May 8, 2000, pg. 21)