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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1088**

In the Matter of the Application for an Off-Sale Liquor License Submitted by Gopher 93,
LLC & Arriel McDonald d/b/a Gopher 94 Wine & Spirits.

**Filed April 9, 2012
Affirmed
Collins, Judge***

Minneapolis City Council

Dennis B. Johnson, Jeffrey D. Bores, Chestnut & Cambronne PA, Minneapolis,
Minnesota (for Gopher 93, LLC and Arriel McDonald d/b/a Gopher 94 Wine & Spirits)

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Minneapolis, Minnesota (for City of Minneapolis)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Collins,
Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Relator challenges as arbitrary and capricious respondent's denial of relator's
application for an off-sale liquor license to operate a liquor store in Minneapolis.
Because relator has not established that respondent acted arbitrarily or capriciously, we
affirm.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

In June 2010, relator Gopher 93, LLC applied to respondent Minneapolis City Council (the city) for an off-sale liquor license to operate a liquor store at 217 West Broadway Avenue in Minneapolis. The city mailed notice of a public hearing regarding relator's application to 22 residents and property owners within 600 feet of the proposed establishment, as required by Minneapolis Code of Ordinances § 362.290. At the October 2010 public hearing, the city heard comments both supporting and opposing relator's license application. The city also received written comments both supporting and opposing relator's application. At a March 2011 committee meeting, the city's Manager of Business Licensing recommended to the city's Regulatory, Energy & Environment Committee that relator's license application be approved, explaining that relator's business plan conforms to proposed conditions and meets minimum licensing standards. The committee also received additional comments both supporting and opposing relator's application.

On April 1, 2011, the city denied relator's license application by an eight-to-five vote. In subsequently issued written findings, the city observed that the West Broadway community has improved in recent years and that "a broad and diverse range of north Minneapolis community residents, workers, business owners and operators, and religious and charitable institutions" expressed concerns and opposition to the application. While the city acknowledged that relator's application meets all minimum code and regulatory requirements imposed by the city and received some community support, the city concluded that the "great weight of opinion expressed by community institutions and

residents was decidedly and stridently opposed to the application.” This certiorari appeal followed.

D E C I S I O N

A municipality has broad discretion when determining whether to issue a liquor license. *Wajda v. City of Minneapolis*, 310 Minn. 339, 343, 246 N.W.2d 455, 457 (1976). Our review of a municipality’s decision to grant or deny a liquor license application is narrow and “should be exercised most cautiously,” granting relief only from “unreasonable, arbitrary, capricious, or fraudulent action.” *Id.* at 343, 246 N.W.2d at 457. When an applicant satisfies the minimum requirements established by ordinance, the municipality must consider the application; but the municipality “is by no means divested of its legislative authority and responsibility to pass upon the merits of the application.” *Country Liquors, Inc. v. City Council of City of Minneapolis*, 264 N.W.2d 821, 824 (Minn. 1978). The applicant bears the burden of demonstrating the arbitrariness of the licensing authority’s action. *Id.*

I.

Relator first argues that the city’s denial of relator’s license application was arbitrary and capricious because public comments in opposition to the application consisted of “generalized” complaints from individuals not directly affected by the proposed liquor establishment. We disagree.

In *Country Liquors*, although the applicant met all minimum licensing requirements, community residents expressed opposition to an off-sale liquor license application “based generally on the potentially adverse impact of the proposed liquor

store on a number of community programs and institutions.” 264 N.W.2d at 823 & n.1, 824. The Minnesota Supreme Court concluded that the city council’s decision denying the applicant an off-sale liquor license was not arbitrary or capricious. *Id.* at 824. Here, as well, the community opposition to relator’s license application included concerns regarding public safety, resources, and the impacts of a liquor store on local businesses and neighborhood revitalization efforts, such as the “West Broadway Alive!” project and the “Lowry Avenue Strategic Plan.” These concerns are no more generalized than the community concerns identified in *Country Liquors*. *See id.* at 823 n.1. Thus, relator has not established that the city’s decision to deny the license application was arbitrary or capricious based on the “generalized” nature of the comments.

Relator also asserts that the public input at the October 4, 2010 public hearing was a “50/50 split to support or oppose” the license application. But a majority of opposition is not necessarily required to support the denial of a liquor license application; indeed, the *Country Liquors* decision does not specify the number of community members who opposed the application in that case, but rather states that “several representatives of north side community organizations voiced opposition to appellants’ application.” *Id.* at 823. Moreover, here, although the 20 individuals who *attended* the October 4, 2010 public hearing were equally split in their support or opposition to relator’s license application, the written comments from local businesses, developers, and community organizations overwhelmingly opposed the application—seven letters opposed relator’s application, while only one supported it. And additional opposition statements from community residents and organizations were submitted in March 2011. Thus, relator has

not established that the city's decision was arbitrary or capricious based on the quantity of support versus opposition to relator's license application.

Relator further asserts that the opposition at the March 2011 committee meeting came from individuals and organizations located far from the proposed liquor store location. Specifically, relator asserts that a pastor who represents a church located more than half a mile away, the chairwoman of the West Broadway Business Association who lives more than two miles away, and individual residents who reside between one and three or more miles away from the proposed location will not be directly affected by the proposed liquor store. But relator does not establish that residents will not be directly affected simply because they reside outside a certain radius of the proposed liquor store location. Indeed, one resident stated that she shops in the vicinity of the proposed liquor store location, and other individuals expressed opposition on behalf of the broader interests of community residents and businesses. *See id.* at 823 (acknowledging that opposition to liquor license application came from "representatives of north side community organizations").

Moreover, Minneapolis Code of Ordinances § 362.290, which requires that residents and property owners within 600 feet of a proposed liquor store location be notified of a public hearing on the liquor-license application, does not establish that residents and property owners located *outside* a 600-foot radius cannot be directly affected by the grant or denial of an off-sale liquor license application. Thus, relator has not established that the city's decision was arbitrary or capricious based on the influence of public comments from parties not directly affected by the grant or denial of the license.

Accordingly, relator is not entitled to relief on this ground.

II.

Relator next argues that the city's decision was arbitrary or capricious because the record demonstrates that relator is suitable to receive a license but community members and the city's findings reference violations, nuisances, and criminal activity caused by previous liquor establishments at or near relator's proposed liquor store location. We disagree.

A municipality's denial of a liquor license application based on the improper conduct of a location's previous licensees or business patrons is arbitrary and capricious. *Wajda*, 310 Minn. at 344-45, 246 N.W.2d at 458. In *Wajda*, the Minnesota Supreme Court found "[n]o substantial evidence indicat[ing] that the premises themselves were inherently unsuitable as the location of a tavern if the tavern were lawfully and properly managed and operated." *Id.* at 346, 246 N.W.2d at 459. There, it was undisputed that the applicant was competent to run a liquor establishment without significant violations or complaints from neighbors. *Id.* at 343-44, 246 N.W.2d at 458. Similarly, here the record and the city's findings reflect that the city did not anticipate misconduct on the part of relator and that relator displayed "forthrightness, earnestness and cooperative spirit . . . during the licensing process," including its agreement to be bound by operational conditions. But the record and the city's findings also reflect the community's concerns regarding the overabundance of liquor stores in the area, the inconsistency of *any* liquor store with the existing neighborhood revitalization plans, the effect of an additional liquor store on substance abusers and youth in the community, the litter problems associated

with a liquor store, and the demands that a liquor store would place on public-safety resources. These concerns are not based on problems caused by previous licensees or anticipated misconduct by relator. Rather, these concerns demonstrate that the location is inherently unsuitable for a liquor store, which is an appropriate and rational basis for denying an off-sale liquor license application. *See Country Liquors*, 264 N.W.2d at 825.

Although we recognize that the record contains references to misconduct by previous licensees in the area, the record does not show that the city's decision to deny relator's license application was improperly based on such references. Accordingly, relator has not established that the city's decision to deny the application was arbitrary or capricious on this ground.

III.

Finally, relator contends that the record does not demonstrate that the proposed location of its liquor establishment is unsuitable for a liquor-store use because the location is zoned to permit off-sale liquor stores, liquor has been sold at the location for more than 40 years, and the city's findings acknowledge the existence of newly licensed liquor establishments in the area that are "operated in a generally compliant and positive manner."

"A city council has the power to refuse a [liquor] license or to limit the number of licenses to be granted, when, in the judgment of the council, the welfare of the city suggests such action." *Polman v. City of Royalton*, 311 Minn. 555, 556, 249 N.W.2d 466, 467 (affirming municipality's denial of off-sale liquor license based on municipality's judgment that existing liquor establishments fulfilled community need and

overtaxed city's limited traffic and law-enforcement resources). Here, although the city acknowledged the existence of compliant liquor establishments in the area, it also found that the community "is already well-served with multiple existing off-sale liquor establishments and the addition of yet another could overtax the area's limited law and code enforcement resources."¹ The record reflects community opposition consistent with this finding.

Relator asserts that the record does not demonstrate that the area is oversaturated with off-sale liquor establishments because relator's proposed liquor store location is more than 2,000 feet from the nearest off-sale liquor store, as required by city ordinance. However, because a liquor license *may* be granted consistent with local laws and regulations does not mean that the municipality *must* grant a license. *See Country Liquors*, 264 N.W.2d at 824 ("Where the minimum requirements are satisfied, the [city] council must consider the application, but is by no means divested of its legislative authority and responsibility to pass upon the merits of the application."). And relator's compliance with the city ordinance requiring off-sale liquor stores to be more than 2,000 feet apart does not foreclose a conclusion that the neighborhood is oversaturated with liquor establishments; a citywide ordinance in a city the size of Minneapolis may not account for the unique circumstances of a particular neighborhood. *See id.* (observing

¹ Relator contends that the record lacks evidence that a new off-sale liquor store would put increased pressure on the city's resources. But relator agreed to several operational conditions that could require inspection or other involvement by the city. And community members raised concerns about increased panhandling, littering, substance abuse, sale of controlled substances, and other crimes caused by potential patrons of a liquor store that could affect city resources even if relator operated compliantly.

that “the very reason for allowing the [city] council substantial latitude in these matters is to permit adequate consideration of unusual circumstances”).

In sum, because the record supports the city’s finding that relator’s proposed liquor store location is unsuitable for an additional off-sale liquor store, relator has not established that the city’s decision was arbitrary or capricious. Accordingly, relator is not entitled to relief on this ground.

Affirmed.