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6 February 2008

Alcohol License Review Committee  
c/o City Clerk, City of Madison  
210 Martin Luther King Jr. Blvd.  
Madison, WI 53703

Re: Good Times Neighborhood Bar  
57 S. Stoughton Road  
Agent: Lawrence Schmock

Dear Members of the Alcohol License Review Committee:

We represent Lawrence Schmock and LWS Investments TWO, LLC doing business as the Good Times Neighborhood Bar, 57 S. Stoughton Road. I have had the opportunity to review the videotape recording of your meeting of January 16, 2008 with respect to this alcohol beverage license. Based upon a review of that record, I fully expect that Good Times will be on your agenda for Wednesday, February 20, 2008. Unfortunately, I will be out of state on vacation between February 10 and February 20 and will not land back in Madison until after your meeting is over on the 20<sup>th</sup>. Consequently, I will not have an opportunity to appear before you at that time.

Based upon my review of the January 16 meeting and discussions with other individuals, it is very probable that an agenda item will include the possibility of some kind of formal license action with respect to Good Times at your meeting of February 20. Permit me to share with you comments I would have made had I had the opportunity to be there.

Once thing that struck me with respect to a review of the discussion that occurred at your meeting of January 16 is that there appears to be some misunderstanding with respect to the ordinances, statutes and processes to be used in terms of actions against a licensee for alleged violations of ordinances, statutes or license conditions. Since some of you know I was counsel to your committee for some 15 years before leaving the City in 1998, I will take this opportunity to share with you what I believe the process should be in order to comply with the statutes and ordinances. At the outset, I take you to Section 38.10(1)(a) of the ordinances which permits any person to file a sworn complaint to commence the process seeking a suspension or a revocation. Traditionally, however, in the vast majority of circumstances, it is

nominally the police department or some officer of the police department that signs the complaint drafted by the City Attorney's Office that then commences the action. Just by way of information, let me point out to you that section 38.10(1)(b)4 indicates that a complainant may be required to provide security for costs of conducting a hearing. This is designed to give the City some protection with respect to being forced into a hearing situation by some disgruntled citizen who files a formal complaint with the Common Council. In short, this provides the City with the opportunity to tell a complainant to put their money where their mouth is before commencing the sometimes expensive process of going through a full blown hearing.

Section 38.10(1)(ar) requires that upon the filing of a complaint, the Common Council shall issue a summons signed by the Clerk to appear before the Alcohol License Review Committee. Consequently, before the ALRC has jurisdiction to proceed with a formal hearing, the Common Council must adopt a resolution authorizing the Clerk to issue a summons to the licensee to appear before you. This is the issue I suspect that will be before you on February 20<sup>th</sup> – that is, should the Committee request the Council to issue a summons to have Good Times appear before you with respect to an allegation or allegations stemming from an incident which occurred on January 21, 2008.

As I know you are aware, the City Attorney's office has already commenced a prosecution in Municipal Court as an outgrowth of that incident. In addition, the City Attorney has also issued a letter pursuant to the point system imposing 125 points worth of violations as a result of that incident.

The question, it seems to me, is whether it is appropriate, given the fact that a prosecution has already been commenced, to summons Good Times with respect to the possibility of a suspension or revocation of their license. In this respect, permit me to refer you to Section 38.10(4)(b) of the ordinances which deals specifically with the demerit point system used as a trip wire for alcohol beverage license actions. That ordinance indicates that the point system is used to identify habitually troublesome license holders who have repeatedly violated statutes and ordinances for the purposes of recommending suspension or revocation of the license. The basic underlying premise for the point system was to provide a system of progressive discipline with respect to licensees. I can tell you from my own personal experience that back in the late 1980s, after a large number of alcohol beverage license suspension hearings, the Committee was of a mind to come up with a system to reduce the number of hearings which were at that point becoming a bit unmanageable. That then led to the creation of the demerit point system as a trip wire before a full blown suspension or revocation proceeding.

Section 38.10(4)d 1.a. covers a formal expression of concern. That particular provision indicates that if a licensee's most recent point violation or violations occurred on the same

date, and it resulted in a point assessment reaching at least 100 points, but less than 200 points, would be cause to appear before the Committee for a formal expression of concern. If the licensee appears before the Committee, no points shall be assessed as a result of that appearance. Formal expressions of concern may occur no more than once every 12 months.

That is precisely the posture presented to you by Good Times. The City Attorney has taken formal action by way of a prosecution and has assessed 125 points. This case is ripe for having Good Times appear before you for a formal expression of concern. Rather than jumping to the next step which would be to ask the Common Council to authorize the Clerk to issue a summons to have the licensee appear for a possible suspension or revocation hearing, permit me to suggest to you that, if not an outright denial of due process, proceeding with a suspension or revocation hearing, given the existence of the point system and the pending prosecutions, is at least a violation of the spirit of the ordinances underpinning the concept of progressive discipline.

I am also aware that Good Times was on a list of some two dozen licensees on your agenda for May 16, 2007 potentially implicating license renewals. I was present representing another client and was not representing this licensee at that time but was present for that portion of the agenda. I am aware that subsequent to that time after meetings between the police department and my client, that renewal did occur and there was no formal action ever taken either with respect to a non-renewal or a revocation or suspension of the license concerning some problems with the license up until that time. To my knowledge, no new license conditions or any other written agreements were arrived at with respect to those discussions that occurred subsequent to May 16.

Permit me to also briefly discuss what I view to be an important distinction between your role as policy-maker and quasi-judicial hearing body and the role of the City Attorney with respect to prosecutions as well as revocations, suspensions and non-renewal proceedings before you. While I feel there is no impropriety with respect to individual members of the Committee indicating concerns with respect to any licensee in the City of Madison, it seems to me that it is appropriate to refer those concerns to the police department and the City Attorney's office with respect to a decision about whether it is appropriate to proceed, and if so, how to proceed. To vest the Committee with the role of judge, jury and prosecutor flies in the face of fundamental American due process.

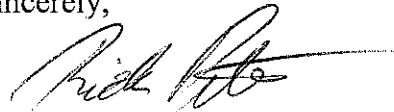
Having said all of this, I will also indicate to you that we have been meeting with the City Attorney and the police department in terms of addressing their concerns including the incident of January 1 which, we agree, needs to be addressed. It is clear to me and my client that some management and operational changes are overdue. Before leaving for vacation on February 10, I will be putting together some proposed changes for consideration by the client, the police department and the City Attorney's office which will hopefully address the

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underlying concerns of those agencies as well as members of the Committee. One can say that this is something that should have been done after the meeting of May 16. I am not without sympathy with respect to that sentiment. However, not having been a party to the discussions and seeing nothing that is memorialized in any agreement between my client and the City, I can only suggest to you that I believe that we can put something together that is fair, comprehensive and acceptable to the City Attorney, to the police department and hopefully to the members of the Alcohol License Review Committee.

Again, permit me to apologize for not being able to attend the meeting of the 20<sup>th</sup>. In the meantime, or even subsequent to that time, if any of you have any questions about anything stated herein or have additional concerns, please do not hesitate to contact me. While out of state, I will be checking my e-mail on a daily basis. That address is [rpetri@murphydesmond.com](mailto:rpetri@murphydesmond.com). I am also available by cell phone at 608-235-2262

Sincerely,



Rick Petri

RP:smh  
080416  
ALRC lt

cc: Assistant City Attorney Steve Brist  
East District Police Capt. Jill Klubertanz  
Central District Police Capt. Carl Gloede  
Mr Lawrence Schmock