

DATE: July 18, 2012

TO: Chair Hart, ALRC Members

FROM: ACA Jennifer Zilavy; Alcohol Policy Coordinator Mark Woulf

RE: Alcohol Beverage license Application for Orpheum of Madison Inc.

On your Agenda for the July 18, 2012 Alcohol License Review Committee meeting, you will consider the application for the above-referenced entity located at 216 State Street. There have been many publicized concerns regarding the ownership structure and the management of this property. To date, there remain several unresolved issues that potentially impact the issuance of an alcohol beverage license to the entity applying as well as a more general issue as to the qualifications of the individual and/or individuals seeking the license.

The Orpheum was issued an Official Notice for various fire code violations on May 8, 2012. Several of the violations were considered serious safety issues by the Madison Fire Department. The Fire department re-inspected 216 State Street on May 18, 2012 and the violations were not corrected. The violations remained uncorrected until the City and the Fire Department threatened to close the establishment in June, 2012. The most serious violations were corrected as of June 29, 2012. As of earlier today, there are still several outstanding fire code violations. ACA Zilavy spoke with Fire Marshall Ed Ruckriegel earlier today and he informed her that the Orpheum has a re-inspection scheduled for 2:00 p.m. today on those remaining issues. ACA Zilavy spoke with Ruckriegel at approximately 3:45 p.m. this afternoon and learned that the remaining issues remain unresolved. According to Eric Fleming, the problem is his contractor and he told the fire inspector that he will have another contractor on site tomorrow morning. Whether it is the contractor's fault or not, there are fire code violations that were the subject of the May 8, 2012 Official Notice that remain as of today's date.

There is significant question regarding ownership of 216 State Street and the property has been the subject of complicated litigation. 216 State Street was foreclosed on and a receiver was appointed to represent the financial interests of the creditor and an order was issued preventing Eric Fleming from transferring or encumbering the property. Fleming represented that he transferred the property to his girlfriend, Olesya Kuzmenko, prior to that court Order. At this point, there is really no way of knowing who owns what and who is involved in what as it relates to 216 State Street. In March of 2011, Eric Fleming made false representations to ACA Zilavy regarding the operation of the Orpheum and a provisional liquor license was issued based upon those representations. The provisional license was later revoked when those misrepresentations were brought to the attention of the City Clerk. Given the foreclosure and on-going litigation and the question regarding who plays what part in the operation and management of the Orpheum, it would not be prudent for the Committee to issue a liquor license at this time.

There is also the issue of the State Seller's Permit. If Henry Doane and Eric Fleming still have any ownership interest, they can continue to inactivate and activate the Seller's Permit on a daily basis. There is nothing that prevents either one from doing so. When the Seller's Permit is inactivated, they are not allowed to sell or serve alcohol. This past spring, Henry Doane inactivated the Seller's Permit retroactive to April of 2011. In June, Eric Fleming reactivated the Permit. According to the Department of Revenue, since they are both members of the corporation that has the seller's permit they can continue to activate and reactivate as often as they wish. This goes to the problem of not knowing who the lessor is and who is actually a member of each corporation that may be involved in the operation of 216 State Street.

There is a significant concern regarding the day-to-day management of the Orpheum, specifically the oversight of alcohol sales and consumption. Olesya Kuzmenko is listed as the liquor/beer agent for Orpheum of Madison, Inc. and in June 2012 completed the seller/server certification. What experience does she have operating a venue of this nature? Presumably Eric Fleming will be running the operation and as mentioned above, there are issues regarding his qualifications as well as the ownership issues. The Orpheum is too large of a venue to risk issuing a license in this current situation of not knowing who plays what role and what the outcome of the current litigation may be. Factor in Fleming's previous misrepresentations and failure to address fire code issues and the risk is even greater. Ultimately, it is up to the ALRC to determine whether the liquor license should be issued, denied, or tabled until the litigation comes to a conclusion.