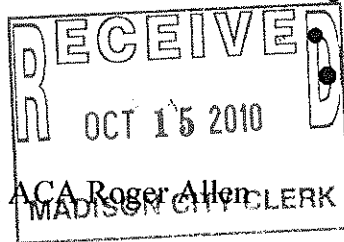


# Memorandum



**MurphyDesmond**  
**LAWYERS**

**To:** ALRC Members and ACA Roger Allen

**From:** Rick Petri

**Re:** Alcohol Beverage License Application  
for 111 West Main Street

**Date:** 14 October 2010

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You have before you the above application and questions have been raised regarding ALDO and how it may inform your decision making process.

Undeniably, this address is located within the ALDO boundaries. Permit me to comment on the provisions of ALDO which lead me to conclude that you may exercise your otherwise inherent discretion in granting the license application for a non-restaurant, non-hotel, non-exceptional circumstance license, the majority of whose gross receipts come from alcohol.

As you know, ALDO was to sunset next month, but was recently amended to sunset in March, 2011 to allow considered review of some proposed changes to ALDO.

I conclude that you do have the discretion to recommend approval to the Common Council. I come to this conclusion for the following reasons.

Section 38.05(9)(o)4. defines "Ceased Regular Operations." That term includes when a license is surrendered, the business is no longer open or it fails to submit a renewal. However, sec. 38.05(9)(o)4.iii. also states that the decision regarding "ceased regular operations" will be made by the Common Council upon recommendation by the ALRC. In short, you have the discretion to recommend whether, under the relevant facts, operations ceased.

Here are some relevant facts. A restaurant, Que Sera, closed in 1999. Subsequent to that, in 2007 the Common Council granted a bar operations license for an entity controlled by Glen Jahns (the Shamrock operator from next door). That license was renewed by the Common Council in 2008 and 2009, expiring on June 30, 2010. That business never opened due to the poor economy and, despite that, renewals were granted. The license expired effective July 1, 2010 after the City Attorney suggested to applicant that it not be renewed because of failure to open.

It is interesting to note that the 2007 granting of the license was at a time when ALDO was being hotly debated. Certainly, the building owner, Attorney Larry Lichte, unabashedly assumed that the license would serve as a "place holder" assuming ultimate adoption of ALDO, the components of which were known at the time. I believe that the same assumptions informed the Council's decision when the "bar" license was granted. Further, the renewals in 2008 and 2009 are an additional indication that the "place holder" status of the license was tacitly recognized by the ALRC and Common Council when those actions were taken.

I also make the following additional points. As you know, the 365 day restriction was recently “suspended” by ordinance changes upon recommendation of the ALRC Downtown Alcohol Sub-Committee. Section 38.05(9)(o)5.b.viii states in relevant part:

The ALRC may recommend approval . . . notwithstanding the 365 day restriction . . . so long as the application is filed on or before October 4, 2010, and the proposed establishment is intended to replace a former . . . Class B Combination alcohol beverage license that has ceased regular operations. . . and no other business has occupied the premises since the closing of the former licensed establishment.

The application before you was filed before October 4, 2010. The term “Class B Combination alcohol beverage license” does not state whether it only applies to non-bar Class B licenses.

As an aid to construing what your authority is under ALDO, I would also add that the statement of purpose includes the following:

. . . the City seeks to MAINTAIN or gradually reduce the number and capacity of certain types of alcohol beverage licenses. . . (Emphasis added.)

The popular assumption is that every opportunity to stop a bar at any location in the ALDO area is the core principle underlying ALDO. It is not. The quoted language recognizes the ability to achieve a reduction in bars over time without undue economic harm to property owners who have locations historically devoted to bar use.

In my 45 years in Madison, this location has almost always been a bar and the entire block has been replete with bar operations (although there are and have been a smattering of restaurants). It, historically, has not been an unusual call generator when compared to lower State Street.

I am not suggesting that you must approve a bar. I am merely stating that ALDO does not prohibit you from approving a bar for the reasons quoted above.

RP:kka/srp  
20028.101997  
ALRC Memo  
cc: Attorney Larry Lichte  
Mr. Curt Brink