Lincoln Nebraska's Capital City

LINCOLN NEBRASKA MAYOR DON WESELY

VETO MESSAGE

July 24, 2001

Special Permit 1918 - Application of Mike Olderbak to sell alcoholic beverages at 338 North 27th Street

Dear Chair McRoy and Members of the City Council:

I hereby veto Bill No. 01R-177 (Resolution No. A-80974 passed by the City Council July 16, 2001) which is a request for authority to sell alcohol off the premises on property generally located at 338 North 27th Street.

Under the laws of the City of Lincoln a special use permit must be obtained to sell alcohol off premises. The special use permit requires a 100 foot separation of alcohol premises from a residential district or use. This application fails to conform to the 100 foot requirement of the ordinance. The premises lack the required 100 foot separation on three sides, being within 11 feet on one side, within 41 feet on another, and within 8 feet on the third.

The key question is how close should businesses that sell liquor be to residential neighborhoods. I believe it is appropriate to require some separation between liquor establishments and neighborhoods. If the Council disagrees with the current ordinance requiring a 100 foot separation between establishments that sell alcohol and a residential neighborhood it can amend or repeal the ordinance regarding alcohol special permits.

The second reason I am vetoing this resolution can be found in the long history of the application. The original application for a special use permit at this location was reviewed by the Lincoln Lancaster County Planning Commission staff in 1996. On September 11, 1996 the Planning Commission voted to recommend denial of the special use permit. The City Council voted to deny the special use permit after a hearing held on September 30, 1996. Nonetheless, Kabredlos applied for a liquor license which the City Council recommended for denial after a hearing on August 25, 1997. The Liquor Commission issued the license after a hearing, over the City's objection, on November

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26, 1997. The City asked for a re-hearing which was overruled on December 30, 1997. The City appealed to the District Court which, after trial, affirmed the action of the Commission on March 29. 1999. The City then appealed to the Court of Appeals and lost in an Order entered June 20, 2000. Finally, the City appealed to the State Supreme Court which reversed the Liquor Commission, the District Court, the Court of Appeals and ordered the license be denied on May 18, 2001.

After the City has invested much time, money, and effort in reaffirming the right to enforce the special use permit ordinance to cast aside the court decision and ignore the results would be a mistake.

Lastly, the action sets an unfortunate and regrettable precedent. All new applicants could rightfully point to this Council vote to waive the 100 foot separation to a distance of 8 feet on one side and no mitigation as a reason they should be allowed to violate the ordinance. To allow the Council action to stand would represent the first time ever on a liquor special permit that the City Council granted a waiver of the 100 foot distance requirement over the recommendation of denial by both the Planning Commission and Planning staff.

For the above and foregoing reasons, I hereby veto Special Permit 1918.

Don Wesely

Don Wesely, Mayor