ISSUED FEBRUARY 26, 1996

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

AGUILA FAMILY TRUST Rosario Aguila, Trustee dba The Latin Village 8825 East Washington Boulevard Pico Rivera, CA 90660 Appellant/Licensee, v. THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL, Respondent.	)	AB-6544 File: 47-291873 Reg: 94007403 Administrative Law Judge at the Dept. Hearing: Samuel D. Reyes Date and Place of the Appeals Board Hearing: January 11, 1996 Los Angeles, CA

Rosario Aguila, trustee of the Aguila Family Trust, doing business as The Latin Village (appellant), appealed from a decision of the Department of Alcoholic Beverage Control[1] which denied appellant's request to modify a condition on its on-sale general public eating place license concerning the hours that alcoholic beverages may be sold and consumed, on the grounds that the original circumstances which caused the condition to be imposed had not changed, in accordance with Business and Professions Code §23803.

Appearances on appeal included Rosario Aguila, trustee, for appellant; and

[1]The decision of the department dated June 22, 1994 is set forth in the appendix.

Jonathon E. Logan, counsel for the department.

FACTS AND PROCEDURAL HISTORY

On December 27, 1993, a petition for conditional license was signed by appellant imposing nine conditions on its license. The reasons for the imposition were listed as undue concentration of licenses, law enforcement problems in the area, and residents within 100 feet of the premises.

Thereafter a request dated May 3, 1994 was made to the department asking that one of the conditions be modified--the condition that set the time during which alcoholic beverages could be sold and consumed.

An administrative hearing was held on May 17, 1995, at which time oral and documentary evidence was received. At that hearing, it was determined that the California Code of Regulations, Title 4, §§61.3 and 61.4 (rules 61.3 and 61.4) applied and that appellant failed to show that the original grounds or reasons for the imposition of the conditions no longer applied.

Subsequent to the hearing, the department issued its decision which denied appellant's petition. Appellant filed a timely notice of appeal.

In its appeal, appellant raised the issue that appellant had met its burden by substantial evidence that the condition should have been modified.

DISCUSSION

Appellant contended that it met its burden to show by substantial evidence that the condition should have been modified, arguing that appellant had obtained all the necessary city approvals.

The department is the exclusive agency authorized to grant or deny licenses, and impose conditions and allow modifications thereto.[2] Local jurisdictions, other than as provided in Business and Professions Code §23958.4(3)(b)(2)--not applicable in this present matter,[3] are not so empowered, but may place restrictions or grant benefits not inconsistent to the department's powers or actions.

The authority of the department to impose conditions on a license is set forth in Business and Professions Code §23800. The test of reasonableness as set forth in §23800(a) is that "...if grounds exists for the denial of an application...and if the department finds that those grounds [the problem presented] may be removed by the imposition of those conditions..." the department may grant the license subject to those conditions. Section 23801 states that the conditions "...may cover any matter...which will protect the public welfare and morals...."

We therefore view the word "reasonable" as set forth in §23800 to mean reasonably related to resolution of the problem for which the condition was designed. Thus, there must be a nexus, defined as a "connection, tie, link,"[4] in other words, a reasonable connection between the problem sought to be eliminated, and the condition designed to eliminate the problem. We view the same general rules to apply in condition removal or modification petitions.

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[2]See the California Constitution, Article XX, Section 22, and the implementing legislation as found in the Alcoholic Beverage Control Act (Business and Professions Code §§23000-25763).

[3]Further references to code sections will be to the Business and Professions Code unless otherwise indicated.

[4]See Webster's Third New International Dictionary, 1986, page 1524.

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The department's authority to grant or deny a request to remove or modify a condition is set forth in Business and Professions Code §23803 which states in pertinent part: "The department...upon the petition of a licensee...if it [the department] is satisfied that the grounds which caused the imposition of the conditions no longer exist, shall order their removal." As we set forth in Park (1995) AB-6595, the department must be satisfied that the grounds for the original imposition still apply.

Leslie Crabb, a department investigator, testified that there were residences within 15-20 feet from the premises and rule 61.4 still applied [R.T. 12, 15].[5] Rule 61.4 essentially states that the department shall not issue a license if there are residents within 100 feet of the premises, which apparently is based on an implied presumption that a retail alcoholic operation in close proximity to a residence will more likely than not disturb residential quiet enjoyment.

The United States Supreme Court has declared its concern for the tranquility of residential areas and the need to be free from disturbances. Carey v. Brown (1980) 447 U.S. 455, 470-471, 100 S.Ct. 2286, 2295-2296, 65 L.Ed.2d 263. Other "locational" cases involving protection of residential neighborhoods include Young v. American Mini Theaters, Inc. (1976) 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed2d 310, and Matthews v. Stanislaus County Board of Supervisors (1962) 203 Cal.App.2d 800, 21

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[5]The department failed to show that rule 61.3 applied [R.T. 13]. However, in accordance with Miller v. Eisenhower Medical Center (1980) 27 Cal.3d 614, 166 Cal.Rptr. 826), we will not reverse the matter as there is no "real doubt" the action of the department would be otherwise than as set forth in the department's decision, due to the applicability of rule 61.4.

Cal.Rptr. 914.

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The request to modify the times in which alcoholic beverages may be sold was to allow sales and consumption to 2 a.m. each day of the week (now allowed only on Friday and Saturday nights until 2 a.m.). One of the five residents within 100 feet of the premises [R.T. 9], testified at the administrative hearing concerning fights, noise from yelling and screaming, and the racing of cars. The witness's bedroom windows were next to the premises' parking lot [R.T. 51].

The finding and determination of the department disallowing the requested modification to extend the hours in which sales and consumption would be allowed was a reasonable exercise of its discretion, considering the record concerning residential quiet enjoyment.

CONCLUSION

The decision of the department is affirmed.[6]

RAY T. BLAIR, JR.,CHAIRMAN
JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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[6]This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.