

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH _____

WAUKESHA COUNTY

CITY NEWS AND NOVELTY, INC.,

Plaintiff **CYNTHIA S. ERNST**
CLERK OF COURTS

v.

CITY OF WAUKESHA,

JUL 15 1996

Case No

96 CV 1427

MURPHY

Defendant
THIS IS AN AUTHENTICATED COPY OF AN ORIGINAL DOCUMENT FILED IN THE CLERK OF COURTS OFFICE WAUKESHA COUNTY.
SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Clerk of Circuit Court, Waukesha County Courthouse, 515 W. Moreland Blvd., Waukesha, WI 53188, and to plaintiff's attorney whose address is Suite 403, 44 East Mifflin St., Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 11~~th~~ day of July, 1996.

Respectfully submitted,

CITY NEWS AND NOVELTY, INC., Plaintiff

By

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Jeff Scott Olson

ATTORNEYS FOR PLAINTIFF

CITY NEWS AND NOVELTY, INC.,

Plaintiff,

v.

CITY OF WAUKESHA,

Defendant **11 15 1996**

96 CV 1427

Case No. _____

MURPHY

**THIS IS AN AUTHENTIC COPY OF A
COMPILED DOCUMENT FILED IN THE CLERK
OF COURTY OFFICE WAUKESHA COUNTY,
SS 68.13 AND 781.01, WIS. STATS.**

I. NATURE OF PROCEEDINGS

101. This is an action for judicial review of the final determination of the City of Waukesha in the matter of the application of the plaintiff City News and Novelty, Inc., for an adult-oriented establishment license under the Municipal Code of the City of Waukesha, brought pursuant to § 68.13 and § 781.01, Wis. Stats.

II. JURISDICTION AND VENUE

A. Jurisdiction

201. This Court has jurisdiction over this action pursuant to § 68.13, Wis. Stats., § 781.01, Wis. Stats., and pursuant to its general jurisdiction over civil actions.

B. Venue

202. Venue for this action is properly laid in the Circuit Court for Waukesha County, because the plaintiff's claim arose in Waukesha County pursuant to § 801.50(2)(a), and also because the defendant City of Waukesha "resides or does substantial

business" in Waukesha County pursuant to § 801.50(2)(c), Wis. Stats.

III. PARTIES

A. Plaintiff

301. The plaintiff, City News and Novelty, Inc., is a Wisconsin corporation with the capacity to sue and be sued in this Court, and was a party to the municipal administrative proceedings before the Common Council of the City of Waukesha which resulted in the final determination of which review is sought in this action.

B. Defendant

302. The defendant, City of Waukesha, is a Wisconsin municipal corporation with the capacity to sue and be sued in this Court, and was a party to the municipal administrative proceedings before the Common Council of the City of West Allis which resulted in the final determination of which review is sought in this action.

IV. ALLEGATIONS OF FACT AS TO ALL CAUSES OF ACTION

401. On November 15, 1995, the plaintiff City News and Novelty, Inc., applied to renew its adult oriented establishment license under the provisions of § 8.195 of the Municipal Code of the City of Waukesha for the license year commencing January 26, 1996.

402. On December 19, 1995, the Common Council of the City of Waukesha passed Resolution R88-95 in which it determined not to renew the adult oriented establishment license of City News and Novelty, Inc.

403. Pursuant to § 68.08, Wis. Stats., City News and Novelty, Inc., filed an appropriate and timely request that the Common Council renew its December 19, 1995, initial determination.

404. On January 22, 1996, the Common Council of the City of Waukesha adopted a decision on review which affirmed its December 19, 1995, initial determination.

405. Pursuant to § 68.10, Wis. Stats., City News and Novelty, Inc., then appealed that decision on review to the City of Waukesha Administrative Review Appeals Board.

406. The City of Waukesha Administrative Review Appeals Board held hearings on the plaintiff's appeal on April 2 and 9, and on May 7 and 8, 1996, and met to deliberate on its decision on June 10, 18, 25 and 28, 1996.

407. On June 28, 1996, the Administrative Review Appeals Board issued its FINDINGS, CONCLUSIONS AND DECISION. A copy of this document is attached hereto, denominated Complaint Exhibit A, and made a part hereof by reference.

408. It is this municipal final determination which the plaintiff now asks this Court to review pursuant to § 68.13, Wis. Stats.

V. VIOLATIONS OF LAW

501. The decision of the Administrative Review Appeals Board (hereinafter Board) is contrary to Ordinance No. 8.195 because it rests in part upon alleged violations of Ordinance No. 8.195 which have not been established through convictions in any court of record.

502. The decision of the Board is contrary to Ordinance No. 8.195 because it rests on alleged violations of Ordinance No. 8.195 by low-level employees and even by patrons concerning which the plaintiff's management had absolutely no culpability, negligence, or responsibility.

503. The decision of the Board is unlawful because it rests on violations of Ordinance No. 8.195 by individuals other than officers, directors or stockholders required to be named under subsection 8.195(3)(b) of the ordinance.

504. The decision of the Board is unlawful because it rests upon grounds of which the plaintiff had no notice prior to the commencement of the hearing, and in some cases, no notice even during the hearing.

505. Ordinance No. 8.195 is void and unconstitutional because it intrudes upon rights secured to the plaintiff and others similarly situated by the First, Fourth and Fourteenth Amendments to the United States Constitution.

VI. CONDITIONS PRECEDENT

601. All conditions precedent to this action within the meaning of § 802.03(3), Wis. Stats., have been performed or have otherwise occurred. In particular, the record of the proceedings below has been transcribed, and such record is available for filing with this Court.

VII. PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays this Court to issue an order reversing the final determination of the of the City of

Waukesha to deny the plaintiff a license as an adult-oriented establishment, and directing the City through its appropriate agents and officials to issue to the plaintiff an adult-oriented establishment license forthwith, awarding the plaintiff its costs and fees incurred in connection with bringing this action, and making provision for such other and further relief as authorized by law and as the Court deems just.

Dated this 11~~th~~ day of July, 1996.

Respectfully submitted,

CITY NEWS AND NOVELTY, INC., Plaintiff

By

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