

NUISANCE BUSINESS ACTIVITY: THE TRAVEL INN AND THE CITY OF GREENVILLE

Ronald W. McKinney

The Greenville Police Department had to respond to over 900 police calls to the Travel Inn in just over two years. Common sense says that fact alone should make for an open and shut case for revoking the business license of the offending business activity. Yet the administrative and judicial proceedings to revoke the business license of the Travel Inn went on for almost eight years: They began in August, 2006, but the South Carolina Supreme Court's denial of the Travel Inn's petition for certiorari did not come until July 2014. This account spares you the details of our travails during that time but shares with you a synopsis of the key events and some of lessons we learned.

NOTE: These comments are not about statutory and case law. Those can be ascertained with some basic research. Rather, these comments talk about taking some extra steps that may help spare you many years of litigation when revoking the business license of a nuisance business.

The Glory Days: The Travel Inn was located on Wade Hampton Boulevard (U.S. 29) near Bob Jones University. Under prior owners the facility was known as the Colonial Court and was a community landmark. The 150 or so rooms of the Colonial Court were modest and affordably priced, but were neat, clean, comfortable, and safe. More significant were the restaurant and meeting facilities. The Colonial Court was a popular location for weddings, political dinners, receptions of all sorts, charitable fund raisers, civic club meetings, and Christmas parties. The food was not great, but it was acceptable and modestly priced, and service was reliable. Unfortunately, by the late 1990's or early 2000's, competing venues were adapting to changing public expectations, and the Colonial Court was not. The property was sold and sold again with its name seeming to change with each sale.

The Travel Inn: In 2004 a Georgia company bought the real property with improvements and retained Mr. Amrik Singh to manage the premises. He obtained a business license and identified himself as the owner and president the business entity which was to manage the business of a motel with an Indian restaurant. In the late spring of 2006 Mr. Singh's company bought the real property as well so that it (he) became owner of the real property with improvements as well as the manager of the business activity there. A local bank financed the transaction and secured its interest with a mortgage of approximately two million dollars.

The Problem: In the roughly two years (2004 – 2006) during which Mr. Singh was in charge of the Travel Inn there were over 900 police calls to the premises. Some were for serious matters such as physical altercations or drug transactions. By far most police visits were for such things as 911 hang up calls, intoxication, arguments that disturbed others, and simple assaults. However,

police department protocols required an on-site visit and an interview whenever a response was needed, as well as the presence of at least one back up officer. In short the ride there, the checking, and the reporting back probably required at least twenty-five minutes of time for two officers and two vehicles, and took them off the street, often at times of the night when their presence was needed elsewhere. Effecting an arrest or bringing order in troubled situations would take longer. Dealing with the Travel Inn was a source of frustration for the Police. Persons wandering off the premises into neighboring businesses and a nearby residential neighborhood were a source of frustration and fear for occupants of surrounding premises.

The Revocation: Finally, the Police Department asked the City Attorney’s Office and the Office of Management and Budget to get involved. (The Business License Office is part of the OMB) The acting Revenue Officer sent the Travel Inn written notice that its business license was being revoked, to be effective in forty-five days. The same letter gave notice of Travel Inn’s right to an appeal to the City Manager with an opportunity to be heard in a hearing and ultimately an appeal to the City Council. The Travel Inn appealed to the City Manager, who appointed a hearing officer to take testimony and other evidence and to write a recommendation. The hearing was held, with counsel for the Travel Inn being present and being allowed to present and cross examine witnesses. The hearing officer prepared a report in which he recommended upholding the revocation, and the City Manager did so. The Travel Inn appealed to City Council.

Council Action: City Council received copies of all documents in the record, including a transcribed version of the hearing tapes. As is its custom, City Council set a date for oral arguments and heard from both sides, with each side limited in the total time it had. No new testimony was taken. Mr. Singh’s attorneys made a plea for sympathy for a man who had owned the property “for only three months,” and who said he had a hard time understanding and speaking English. Further, Mr. Singh had always called police when he became aware of a disturbance. His counsel represented that he always cooperated with police when they arrived. A majority of Council seemed moved by the sympathy factors but still concerned about a disturbing trend of events. In rendering a decision, Council voted in essence to sustain the grounds for the revocation but allowed the Travel Inn to reopen for a trial period of 60 days subject to special criteria on security, fencing, registration of guests, and related actions not otherwise required of others in the hotel business. At the end of the sixty days, the City Manager and Police Chief were to review the effectiveness of the Travel Inn’s steps, and the City Manager was to decide whether the Travel Inn was to reopen permanently, to close down, or to operate on a continued probationary period of up to six months.

The City Manager’s Action: At the end of sixty days the City Manager reviewed the intervening occurrences at the Travel Inn. He concluded that there was significant improvement during that time when the Police were making regular checks for compliance with the agreed steps. However, he also expressed concern about a couple of recent events, and he decided that the Travel Inn could remain open on a probationary basis for one year, but serious infractions would result in a shut

Commented [TG1]: Do we need to say “after review of reports, etc.?”

Commented [TG2]: Do we need to say “pursuant to City Ordinance?” or anything like that?

down. In less than two months the City Manager concluded that serious infractions had clearly occurred. Two stand out. In one, a homicide suspect was found to be holding up in a room registered simply to “Bill,” with no last name on the registration book and no ID such as a driver’s license having been provided, in clear violation of the agreed procedures. In the second, Mr. Singh’s daughter – nicknamed named “Lucky” - was arrested by sheriff’s deputies for stealing customer credit cards in the restaurant then charging large amounts in major retailers. When the deputies arrived on premises to arrest Lucky, they were told that she was out of town and they would have to contact her by cell phone. As they stood in the Travel Inn lobby and talked to her by cell phone, they soon realized they could hear her voice coming from a nearby room. She was not out of town or even out of the building. The City Manager directed that written notice be sent to Mr. Singh to wrap up business operations in thirty days, at which time all business activity was to cease, and the Travel Inn would close. Mr. Singh asked for another hearing, but his request was denied.

Trial Court Action. While the administrative proceedings were pending at the City, attorneys for the Travel Inn petitioned the Circuit Court on three occasions for an order to block the mandatory closing and allow the Travel Inn to remain open pending a final resolution by the courts. Three different judges denied the Travel Inn’s requests. After a final disposition by the City Manager in closing the Travel Inn, Mr. Singh appealed on the merits to the Circuit Court. When the appeal came before the circuit court, the trial court judge denied the City’s motion to dismiss and instructed the matter be remanded to the City for a new hearing. His rationale was that the probationary period established by City Council in essence granted a whole new business license for the Travel Inn, and the City could not simply revoke that new license without providing Mr. Singh and Travel Inn an opportunity to be heard in a hearing. The trial court ruled the action was a denial of due process and remanded the matter to the City for another hearing. The City’s position was that there was no new license, Mr. Singh had already had two hearings, and he had agreed to the terms of the probation, which he had violated. Following receipt of the trial court’s order, the City appealed to the South Carolina Court of Appeals.

The First Appeal. Upon reviewing the record, reading briefs, and hearing oral arguments, a panel of the Court of Appeals decided resoundingly in favor of the City on the due process issue by ruling that the City had issued no new license and that the City had no duty under the due process clause to provide yet another hearing. The Court of Appeals remanded the matter to the trial court with instructions to reach the merits of the City’s decision to revoke the license and to do so by assessing the occurrences during the probation period in conjunction with the very high number of calls leading to the initial revocation measures. We believed that the criteria established by the Court of Appeals in its order remanding the case would likely result in a decision favorable to the City once the matter was returned to the circuit court. The Travel Inn’s lawyers did not petition for certiorari to the South Carolina Supreme Court, and the Court of Appeals opinion became the law of the case on key issues.

Trial Court Action on Remand. On remand the trial court took up the matter once again. By that time Mr. Singh and the Travel Inn had defaulted on their bank loan, gone out of business, and the assets were assumed by the bank as mortgage holder. That bank did not attempt to reopen the motel business, and finding a buyer was not easy. By the time of oral arguments on cross motions for summary judgment, Mr. Singh was being portrayed in particularly sympathetic terms as a good man brought down by a City's high handedness. At the trial court hearing, the trial court judge instructed the City to provide him with information on the number and type of police calls made to every other hotel in the City for the same two year period as applied to the Travel Inn. In essence the trial court was undertaking to have the record on appeal expanded with new information. The City did not object, because we knew generally what the results would likely be and the results were going to make the City's case even stronger. We were right. The results showed that the Travel Inn had almost double the number of police calls as the second worst motel in the City, and several times the number of the average of all hotels and motels. Nonetheless, the trial court once again ruled in favor of Mr. Singh. In doing so the trial court reverted to its denial of due process analysis, which the Court of Appeals had previously set aside, and the trial court order dealt sparingly with the criteria the Court of Appeals directed to be considered in addressing the merits of the City's decision to revoke the business license. Once again the City appealed to the Court of Appeals.

The Second Appeal. By the time of the second appeal the transcript of record had grown to three volumes, especially with the addition of data sheets showing the number and types of police calls to every hotel or motel in the City for a period of about two years. Once again the Court of Appeals rendered a decision in favor of the City. In doing so the Court found that the actions of the Travel Inn and its principals during the period of probation when linked to the prior lack of control over the premises was a sufficient justification for the business license revocation. This time Mr. Singh petitioned the South Carolina Supreme Court for a writ of certiorari.

The Supreme Court's Action. There was a period of over two years from the time the Travel Inn's petition went to the Supreme Court (June, 2012) and the Supreme Court's final action of simply denying the petition for certiorari (July, 2014).

The Agony of Eight Years of Process. In the time between the beginning of the process and the Supreme Court's denial of certiorari, the following occurred: Amrik Singh filed yet another civil action under a Section 1983 claim, the police officers who originally asked for the revocation left the force, the police chief changed, the City manager left and a new City Manager came into the position, the acting Revenue Officer (OMB Director) left, the subsequently appointed OMB director served five years and then left, a third OMB Director assumed the duties, the makeup of City Council changed, the attorney handling the case for the City left, and the City Attorney retired. All the new people in all the relevant positions needed to be briefed on all that had transpired

Commented [TG3]: Petition was filed June 25, 2012.
Order denying Writ was filed July 11, 2014.

before. Continuity is difficult when there are multiple personnel changes over several years. Yet prevailing in the appeal on the merits was important for the City, if for no other reason than to avoid the consequences which a loss in the appeal could have on the collateral case for damages under Section 1983. Mr. Singh was claiming in that collateral action that the City's action was responsible for his default on a two million dollar loan and his loss of ownership of an ongoing business and his forfeiture of the premises of a commercial operation. It was a claim, which if successful, would expose the City to major financial loss.

Commented [TG4]: ? need to reword

Lessons Leaned

Things we did right.

1. *We were right regarding the facts and we were right regarding the law.*
2. *We exercised extreme patience before initiating proceedings to revoke the license.*
3. *We treated Mr. Singh with respect.*
4. *We made a case on the points that were our strongest.*

Things we could have done better.

1. *We could have given Mr. Singh written notice of the deficiencies and have it delivered by police command staff along with a proposed list of things to correct in a specific time. In short, it would have been better to make the "probation" up front rather than at the end of the administrative process.*
2. *We should have made a stronger effort to enlist the aid of the occupants and owners of nearby properties in preparing and documenting the initial revocation proceedings. Those who are complaining should be made to realize that if they do not help the City in enforcement then they allow the offending business to get away with portraying the matter as one strictly between the City and the business, when in reality the conflict is between the community at large and the offending business.*
3. *We should have prepared our witnesses more diligently to make them stronger and more persuasive.*
4. *We should have had data ready and presented it at the first administrative hearing to compare the number of police calls to the Travel Inn in comparison with other hotels. The severity of conditions at the Travel Inn would have been more*

Commented [TG5]: Can/should we say that?

dramatically demonstrated to the City Manager, to the City Council, and to the trial judge in the first instance if we had such data “up front.”

5. *We needed a strategy and theme from the beginning which avoided the picture of the “mean old City” vs. the “struggling business man.” It is hard sometimes for City employees to fully appreciate the emotional attachment council members and judges have for small business owners.*

6. *If City Council was struggling on what to do and clearly did not want to revisit the matter again, then rather than having a “probation time” the better solution may have been to delay the vote until the next meeting and to invite from each side a short memorandum on what should be done. The hearing was at a close and did not need to be reopened in order for a vote to take place.*