

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COUNCIL OF THE CITY OF ST. PAUL

In the Matter of the License
Application of Pooja, Inc.,
d/b/a/ Travel Inn

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing on August 4, 1998, before Administrative Law Judge Barbara Neilson, in Room 41 of the Saint Paul City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 554102. The record closed on August 18, 1998, with the filing of the parties' post-hearing reply briefs.

Virginia D. Palmer, Assistant City Attorney, Office of the City Attorney, 400 City Hall, 15 West Kellogg Blvd., Saint Paul, Minnesota 55102, represented the City of St. Paul's Office of License, Inspections and Environmental Protection. Stephen Kelly, Attorney at Law, Bannigan & Kelly, 1750 North Central Life Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2132, represented Pooja Inc. d/b/a Travel Inn (Pooja or Applicant).

NOTICE

This Report contains a recommendation and not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Section 310.05 of the Saint Paul Legislative Code, the City Council's final decision shall not be made until this Report has been made available to the parties to the proceeding and the applicant has been provided an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The applicant and any interested parties should contact the Saint Paul City Council, 310 City Hall, Saint Paul, Minnesota 55102, to ascertain the procedure for presenting argument to the council.

STATEMENT OF ISSUES

This case presents the following issues:

1. Did Pooja, Inc., operate the Travel Inn in such a manner that it maintained or permitted conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of a considerable number of members of the public in violation of St. Paul Legislative Code § 310.06(b)(8)?
2. If so, should the St. Paul City Council deny the hotel/motel license application of Pooja, Inc.?

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Jayeshkumar ("Jay") M. Patel is the president of Pooja, Incorporated, a Minnesota corporation. (Ex. 33; Testimony of Patel.)

2. On April 30, 1997, Pooja purchased the Travel Inn motel located at 149 East University in St. Paul on a contract for deed from Harikrishna, Inc. (Ex. 33). Pooja managed the Travel Inn under Harikrishna's existing license pursuant to a "Management Agreement." (Ex. 2.)

3. At the time he purchased the property, Jay Patel was living in St. Louis, Missouri, managing another motel. From May through December 1997, Jay's brother Sonny managed the Travel Inn. (Testimony of Patel.)

4. The Travel Inn is one of the most inexpensive motels in the city of St. Paul. The majority of Travel Inn's guests come from economically distressed communities and include homeless persons, battered women, and persons who have alcohol or drug dependencies. In addition to its paying guests, the Travel Inn takes in persons pursuant to payment agreements with the Ramsey County Human Services Department and various social service organizations. (Ex. 38; Testimony of Patel.)

5. On August 13, 1997, Lieutenant Nancy DiPerna of the St. Paul Police Department sent a letter to the Travel Inn stating that it had exceeded the police calls-to-service limits for a thirty-day period set by St. Paul's "Excessive Consumption of Police Calls to Service Ordinance." St. Paul Ord. § 267.01-267.06. The Patels received the letter even though it was addressed to the motel's former owner. The letter directed the motel's owner to contact and work with the St. Paul Police Department's F.O.R.C.E unit in an attempt to solve the problems that require the need for police services. (Ex. 35; Testimony of Patel.)

6. In September of 1997, Sonny Patel met with Officers Daniel Cermak and Steve Huspek of the St. Paul Police Department's F.O.R.C.E. unit to discuss how they could work together to reduce the number of police calls for service. The Officers suggested that Sonny hire security, check identification of all motel guests, call the police department during the day to run criminal background checks on people wishing to rent rooms, limit motel stays to four or five days, and lock the fire exit doors. (Testimony of Cermak.)

7. In response to this meeting, Sonny Patel began limiting motel stays to four or five days, instituted a procedure to check guests' IDs, and hired a security company called Private Protection, Inc., to provide security services to the Travel Inn. Sonny Patel also tried locking the fire exit doors, but the St. Paul Fire Inspector later advised against this. (Testimony of Patel.)

8. In December of 1997, Jay Patel moved his family to St. Paul, Minnesota and took up residency in the motel. (Testimony of Patel.)

9. In December of 1997, Jay Patel canceled Pooja's agreement with Private Protection because he was not satisfied with the security services it provided. (Testimony of Patel.)

10. On December 5, 1997, police were called to the Travel Inn on an assault. A witness reported that the suspect had hit his girlfriend twelve times in the face and kicked her several times. When other guests of the motel tried to intervene, the suspect scratched one person, kicked another, and threatened a third person with a knife. (Ex. 13.) On January 1, 1998, it was reported to police that the same suspect stabbed four victims at the Travel Inn, one of whom was trying to intervene when he assaulted his girlfriend. The remaining victims were stabbed in an argument over \$10.00 and some beer. (Ex. 14.) Despite the December 5th assault, the Travel Inn apparently did not evict the suspect or bar him from returning to the motel.

11. On December 31, 1997, Jay Patel hired Rangers Security, Inc., to patrol the motel twice each night after midnight for \$200 a month. For this fee, a Ranger Security guard is responsible for walking through the motel twice a night, checking exterior doors, and making sure that no one is in the hallways or sleeping in the stairwells. If someone is sleeping in the stairwell, the security guard asks the person to leave. If a security guard sees illegal conduct, he notifies motel management. (Ex. 36; Testimony of Peterson.)

12. Jay Patel did not hire a security guard to be on-site 24 hours a day because of the cost. (Testimony of Patel.)

13. In January of 1998, Jay Patel began directly managing the Travel Inn. (Testimony of Patel.)

14. In mid-January of 1998, St. Paul's Fire and Inspections Department shut down the Travel Inn due to longstanding building code violations. (Testimony of Gunther.)

15. In February of 1998, St. Paul Police Officers Cermak and Huspek met with Jay Patel to discuss the continuing problems at the Travel Inn and the large number of police calls for service. (Testimony of Cermak.)

16. In an attempt to reduce the number of police calls, Jay Patel raised the motel rates for a double occupancy room from \$49.50 to \$60.00 a night. (Testimony of Patel.)

17. On February 11, 1998, staff from the St. Paul Office of License, Inspections and Environmental Protection inspected the motel and found fire code violations and a cockroach and rodent infestation. (Testimony of Gunther.)

18. On February 19, 1998, Pooja, Inc., d/b/a Travel Inn, submitted an application to the City of St. Paul's Office of License, Inspections and Environmental Protection (LIEP) for a Class 3 hotel/motel license to operate the Travel Inn. William Gunther, a manager with LIEP, reviewed Pooja's license application. (Ex. 1; Testimony of Gunther.)

19. On February 24, 1998, LIEP staff reinspected the Travel Inn to determine if the motel had sufficiently addressed the violations. LIEP staff found that the active

infestation had decreased but that there were still some signs of infestation remaining. (Testimony of Gunther.)

20. On March 4, 1998, LIEP staff again inspected the Travel Inn. On this visit, the LIEP staff was satisfied that the motel had addressed the code violations and had sufficiently cleaned up the infestation problem. The Travel Inn reopened after March 4, 1998. (Ex. 28; Testimony of Gunther.)

21. Jay Patel spent approximately \$50,000 to bring the motel into compliance with code requirements. (Testimony of Patel.)

22. Once the Travel Inn was allowed to reopen, Mr. Gunther resumed processing Pooja's license application. Mr. Gunther issued a 45-day notice to neighborhood organizations, district councils and other interested parties requesting comments and input on Pooja's license application. (Testimony of Gunther.)

23. In response to the notification, neighborhood organizations serving the Mt. Airy, Capitol Heights, Lower Rice Street, Frogtown and East Midway communities submitted letters opposing the relicensing of the Travel Inn motel. (Exs. 28, 29.) The neighborhood organizations that provided input on Travel Inn's license application represent a considerable number of members of the public.

24. Regions Hospital also submitted a letter opposing the licensing of the Travel Inn motel. (Ex. 31.)

25. Due to the comments received from the neighborhood organizations and Regions Hospital, Pooja's license application was set on for a hearing before Legislative Hearing Officer Gerry Strathman of the City Clerk's Office. (Testimony of Gunther.)

26. A hearing before Legislative Hearing Officer Strathman was held at the end of May 1998. At the hearing, Mr. Gunther submitted a "License Application Summary" to Mr. Strathman recommending either that Pooja's license application be denied or conditions be imposed on its license due to the motel's excessive number of police calls in 1997. (Ex. 3.) Mr. Strathman also received the letters from the neighborhood organizations requesting that Pooja's license application be denied.

27. Due to the contested nature of Pooja's license request, as evidenced by LIEP's recommendation and the objections and concerns raised by the neighborhood organizations, Mr. Strathman recommended that the matter be referred to an Administrative Law Judge for further review. (Testimony of Gunther.)

28. After the hearing before Mr. Strathman, LIEP revised its views based on information provided during the hearing and decided to simply recommend that Pooja's license application be denied. (Testimony of Gunther.)

29. Between May 1, 1997 and July 31, 1998, while the Travel Inn was owned and operated by Pooja, the Travel Inn had approximately 242 police calls to service. Even though a majority of these calls did not result in the issuance of a police report, the calls did require a police officer to be dispatched to the address to investigate. (Ex. 24; Testimony of Pye.)

30. In May and June of 1997, St. Paul Police Officers wrote 10 reports on criminal activity in response to calls at the Travel Inn location. It is possible, however,

that some of the criminal activity reported was not committed by Travel Inn guests on Travel Inn's property and that the motel's location was merely incidental. For example, if a person were mugged walking by the Travel Inn, the motel's address could be entered on the police report as the scene of the crime. (Ex. 24; Testimony of Pye.)

31. Between July 8, 1997, and June 7, 1998, eighteen police reports were written relating to criminal activity occurring specifically at the Travel Inn by guests of the motel. (Exs. 4-21.) The motel was only open about nine months during this period, due to the fact that it was shut down for approximately two months in early 1998 for building code violations. The reported criminal activity included possession of controlled substances, assaults, possession of handguns by convicted felons, and theft. The majority of the reported crimes were assaults, including stabbings and severe beatings, and drug activity, including possession and possession with intent to sell. In one report, the police officer noted that motel personnel were aware that drugs were being sold out of a motel room. (Ex. 5.)

32. An additional eleven "incident report" sheets were issued for police calls between April and May of 1998 which did not result in reports being written. On these occasions, police officers were dispatched to the Travel Inn but, upon investigating, determined that a written report was not necessary. (Ex. 25; Testimony of Pye.)

33. If a property has five or more police calls to service within a 30-day period, it is deemed to be in violation of the Excessive Consumption of Police Calls to Service ordinance. Calls that do not directly relate to the property are weeded out and not counted. Once a property generates excessive police calls, the St. Paul Police Department notifies the owner of the property and directs the owner to contact its F.O.R.C.E. unit to work on reducing the problems requiring the need for police services. (Testimony of Cermak.)

34. The Travel Inn has had five or more police calls to service within a 30-day period on two occasions since 1997. As noted above, the St. Paul Police Department's F.O.R.C.E. unit formally notified the Travel Inn in August of 1997 that it had exceeded the police calls-to-service limits. More recently, in June and July of 1998, the Travel Inn generated enough police calls for service to once again come to the attention of the F.O.R.C.E. Unit as a "problem property." (Testimony of Cermak.)

35. A comparison of similar inexpensive lodging establishments in St. Paul revealed that the Travel Inn has the second highest number of police calls to service during the relevant time period in 1997-98. The Twins Motor Inn, located at 1975 University Avenue, had the highest number of police calls but it is a larger establishment than the Travel Inn. When the size of the establishment is taken into account, the Travel Inn had the highest number of police calls per room. The Travel Inn has only 50 rooms. Between January 1, 1997 and May of 1998, the Travel Inn had 224 police calls to service. In contrast, the Highway Motel, which is located at 2152 West 7th Street and has 25 rooms, had 56 police calls. Moreover, the Days Inn, which is located at 7th and Kellogg and has 203 rooms, had one-third less police calls than the Travel Inn during the relevant time period. (Testimony of Pye.)

36. Many residents of the neighborhoods surrounding the Travel Inn have expressed concerns to the District 7 Planning Council regarding the criminal activity and

noise disturbances at the Travel Inn. The District 7 Planning Council is a neighborhood organization serving the neighborhoods of Mt. Airy, Capitol Heights, Lower Rice Street, Frogtown, and East Midway. Residents have voiced concerns that the Travel Inn poses a threat to the safety of those living and working in the surrounding area and lowers the neighborhoods' property values. Some residents have told District 7 Council members that they are afraid to walk by the Travel Inn. And others have expressed the concern that neighborhood youths hang out by the Travel Inn in the hopes of obtaining alcohol or drugs. (Ex. 28; Testimony of Samuelson, Egan, Liset.)

37. On June 30, 1998, the City filed a Notice of Hearing on LIEP's recommended denial of Pooja's motel license application. (Ex. 22.)

38. On July 23, 1998, the Capitol Area Architectural and Planning Board submitted a letter to the St. Paul Mayor's Office regarding the Travel Inn site. The Board recently completed a comprehensive plan for the State Capitol area and identified the Travel Inn site as having a higher and better use than what currently exists. The Board has proposed that the site be rezoned to governmental/institutional in the rewrite of the Capitol Area Zoning and Design Rules. (Ex. 32.)

39. The hearing in this matter was originally scheduled for June 30, 1998, but was later rescheduled by agreement of the parties to August 4, 1998. (Ex. 23.)

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Saint Paul City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to § 310.05 of the St. Paul Legislative Code (1998) and Minn. Stat. § 14.55 (1997).

2. The hearing was conducted in accordance with the requirements of Minnesota Statutes sections 14.57 to 14.62 and applicable portions of the procedures set forth in section 310.05 of the Saint Paul Legislative Code.

3. The City has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

4. Pooja, Inc., has the burden of proof to establish by a preponderance of the evidence that its license application should be granted. *In re City of White Bear Lake*, 311 Minn. 146, 150, 247 N.W.2d 901, 904 (1976); *North Memorial Medical Center v. Minnesota Department of Health*, 423 N.W.2d 737 (Minn. App. 1988); *In re License Application of 5005 Properties, Inc., d/b/a/ Hillcrest Bingo*, OAH File No. 8-2111-11592-2 (Recommended Decision issued June 18, 1998).

5. The St. Paul Legislative Code § 310.06(b)(8) states that the City Council may take adverse action if "[t]he licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public."

6. Adverse action is defined in St. Paul Legislative Code § 310.01 to include the imposition of conditions on a license or the denial of an application for the issuance of a license.

7. Several neighborhood organizations objected to Travel Inn's license application on the grounds that the conditions at the Travel Inn unreasonably annoy and endanger the safety, health or morals of those living and working in the vicinity. These neighborhood organizations represent a considerable number of members of the public.

8. The City demonstrated that Pooja operated the Travel Inn motel in such a way as to maintain or permit conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of a considerable number of members of the public in violation of St. Paul Legislative Code § 310.06(b)(8).

9. Pooja has not borne its burden to show that its license application should be granted.

10. The City's recommended denial of the motel license application of Pooja is not arbitrary or capricious and is a reasonable exercise of its discretion under section 310.06 of the St. Paul Legislative Code.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

That the St. Paul City Council DENY the application of Pooja, Inc., for a motel license.

Dated this 17th day of September, 1998.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The City of St. Paul's Office of License, Inspections and Environmental Protection (LIEP) has recommended denial of the motel license application of Pooja, Inc., pursuant to § 310.06(b)(8) of the St. Paul Legislative Code. This section states that adverse action may be taken by the City Council if "the licensed business, or the way in which it is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public."

Jay Patel purchased the Travel Inn motel on April 30, 1997. As owner, Jay Patel is the person responsible for the management and operation of the property. From May through December 1997, Jay Patel's brother, Sonny Patel, directly managed the

property while Jay continued to manage another motel in St. Louis. As of January 1, 1998, Jay took over direct management of the property.

The City established that the Travel Inn has been and continues to be a problem property generating excessive police calls concerning criminal activity on its premises. In particular, the majority of the police reports regarding the Travel Inn concern drug activity and assaults committed by Travel Inn guests. In fact, on a per room basis, the Travel Inn generates more police calls to service than any other motel or hotel in St. Paul. Members of the District 7 Planning Council, an organization serving the neighborhoods surrounding the Travel Inn motel, testified that many residents are concerned for their safety and for their property values because of the continued criminal activity at the Travel Inn motel.

While both Sonny and Jay Patel have cooperated with the St. Paul Police Department and have implemented most of the Police Department's suggestions for reducing the number of police calls, the property continues to be a source of numerous police calls. This has occurred despite the fact that the Patels have limited stays at the motel to four or five days, checked guests' identifications, addressed building code violations, and hired a security company to patrol the premises twice a night. In fact, the Travel Inn generated enough police calls in June and July of 1998, to once again come to the attention of the St. Paul Police Department's F.O.R.C.E. unit as a "problem property."

Pooja, as the license applicant, has the burden of proof to establish by a preponderance of the evidence that a license should be granted. In re City of White Bear Lake, 311 Minn. 146, 150, 247 N.W.2d 901, 904 (1976); North Memorial Medical Center v. Minnesota Department of Health, 423 N.W.2d 737 (Minn. App. 1988); In re License Application of 5005 Properties, Inc., d/b/a/ Hillcrest Bingo, OAH File No. 8-2111-11592-2 (Recommended Decision issued June 18, 1998). Pooja argues that its license application should be granted. According to Pooja, the record establishes that both Sonny and Jay Patel have cooperated and worked with the St. Paul Police Department in effort to address the problems that cause the large number of police calls. Pooja contends that such efforts demonstrate that it does not maintain or permit conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of the public. Rather than *permitting* unsafe conditions to exist at the Travel Inn, Pooja argues that it is actively instituting a number of safety procedures to improve the motel, such as hiring security, raising room rates and checking IDs.

Pooja also argues that the City will be acting arbitrarily and capriciously if it denies Pooja's license application given the efforts Pooja has made to improve the Travel Inn motel. In support of its argument, Pooja cites to City of Mankato v. Mahoney, 542 N.W.2d 689 (Minn. App. 1996). In Mahoney, the Minnesota Court of Appeals found that the Mankato City Council acted arbitrarily and capriciously in its revocation of a rental license where the landlord had taken affirmative steps to evict noisy tenants and to prevent any further disruptions of the peace. The court in Mahoney also specifically found that the tenants' guests' loud talking as they left the house, which was the property's third reported noise disturbance, could not be described as so obnoxious or intrusive as to constitute a violation of the city code. Unlike Mahoney, however, the

continued criminal activity taking place on the premises of the Travel Inn *does* constitute conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of a considerable number of members of the public in violation of the city code. Moreover, while Jay Patel testified that he spent approximately \$50,000 upgrading the building after it was shut down in early 1998 for building code violations, the improvements have not significantly reduced the criminal activity or police calls for service. In fact, as noted above, St. Paul Police Officer Daniel Cermak testified that the Travel Inn generated enough police calls in June and July of 1998 to once again come to the attention of the Department's F.O.R.C.E. unit as a problem property.

In addition, Pooja argues for the first time in its Responsive Post-Hearing Memorandum that the City, by recommending denial of Travel Inn's license application, is treating Travel Inn differently than other similarly situated motels in St. Paul. (Responsive Memo at 2.) A city council's disparate treatment of similarly situated license applicants, with no adequate justification, is evidence of arbitrary action. Tamarac Inn, Inc. v. City of Long Lake, 310 N.W.2d 474 (Minn. 1981). Lieutenant Pye testified that the Travel Inn has the second highest number of police calls to service of the motels and hotels in St. Paul. Although the Twins Motor Inn has the highest number of police calls, it is a larger establishment than the Travel Inn. On a per room basis, the Travel Inn generates the highest number of police calls to service of any hotel or motel in St. Paul. Pooja has failed to put forth any evidence to establish that other similarly situated motels with similar levels of police calls to service have been treated differently than the Travel Inn or that the Travel Inn has been unfairly singled out.

Finally, Pooja argues that, instead of denying its license application, the City should grant the license subject to conditions fashioned to address the problems that result in the motel's calls for police services. The record demonstrates, however, that Pooja has already implemented four of the five suggestions of the St. Paul Police Department in an effort to reduce the criminal activity and other problems at the motel. Despite Pooja's efforts to hire security, check guests' identifications, limit motel stays and raise room rates, the property continues to be a source of numerous police calls. The evidence presented at the hearing did not permit the Judge to assess whether Pooja in fact made a committed and meaningful effort to implement the police department's suggestions and thereby take control of the on-going problems at the motel. Clearly Pooja's decision to only have security walk through the motel twice a night was inadequate to address the level of criminal activity at the motel. Yet, as Lieutenant Pye testified, there is no assurance that even 24 hour a day security would significantly reduce the longstanding problems at the Travel Inn. Consequently, based on the ineffectiveness of the remedial measures already taken and the continuing high number of police calls to service, it is reasonable to conclude that the imposition of further conditions will not adequately address the motel's problems. Pooja has failed to present sufficient evidence that it can operate the motel in a manner that will not jeopardize the well being of the neighborhood. Denial of the license is an appropriate course of action.

The Administrative Law Judge finds that Pooja has failed to demonstrate that its license application should be granted. The City has put forth substantial evidence to establish that Pooja maintains or permits conditions which annoy, injure or endanger the

safety, health, morals, comfort or repose of the community in violation of St. Paul Legislative Code § 310.06(b)(8). Based on Pooja's violation of section 310.06(b)(8), the City Council may take adverse action including denial of Pooja's application for a motel license. The City's recommended denial of Pooja's motel license application is not arbitrary and capricious and is a reasonable exercise of its discretion under section 310.06 of the St. Paul Legislative Code.

B.L.N.