

ALCOHOL AND TOBACCO COMMISSION

July 21, 2015

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes

July 7, 2015

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

5. Consideration of Applications -

696 Renewals

62 New/Transfer

14 Catering

2 1<sup>st</sup> Year Escrow

8 2<sup>nd</sup> Year Escrow

2 3<sup>rd</sup> Year Escrow

5 4<sup>th</sup> Year Escrow

1 5<sup>th</sup> Year Escrow

13 New/Renewal Carriers.

6. Renewal Letters and Waiver of Fees for Letters of Extension -

7. Applications for Discussion –

RR64-31493 Pavilion Partners, LLC – New application with the local board voting 2-2

RR49-31463 Fountain Tap, LLC – New application with the local board voting 3-1 to approve

RR23-04382 Farley's Corner Pub, LLC – Renewal with the local board voting 3-1 to deny

DL45-29806 Miller Beach Market Place, LLC – Renewal with the local board voting 3-0 to deny

RR92-27827 MNS, LLC – Renewal with the local board voting to deny

8. Inactive Files –

2 Permits Subject to Auction

5 Permits Not Subject to Auction

9. Old Business -

10. New Business -

Revocation of Employee Permits

Robert Marsden II, BR1803160

Bethelyn Morris, BR1507277

MINUTES

ALCOHOL AND TOBACCO COMMISSION

JULY 21, 2015

**CALL TO ORDER/NOTING OF QUORUM**

Chairman Cook called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Coleman, Commissioner Grubb and Commissioner Maginn. Commission Counsel Allen, Prosecutor Mader, Executive Secretary Rothenberg and Superintendent Strittmatter were also in attendance.

Katie Maddox, Norman Hellmers, Patricia Hellmers, Jeffrey Hellmers, Tony Mitson, Murray Clark, Alex Intermill, Matt Brase, Marc Carmichael, Jeff McKean, Mark Webb and Greg Genrich were present as observers.

**DISPOSITION OF MINUTES**

Vice Chairman Coleman moved to approve the minutes from the July 7, 2015 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

**PROSECUTOR'S RECOMMENDATIONS**

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the 36 Parties' Agreed Dispositions that were submitted, totaling approximately \$12,750.00 in fines.

Commissioner Grubb moved to approve the Dispositions that were submitted for the July 21, 2015 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

**HEARING JUDGE'S RECOMMENDATIONS**

No Hearing Judge's Recommendations

**CONSIDERATION OF APPLICATIONS**

Commissioner Grubb moved to approve and incorporate by reference these lists of permits for renewal, either with or without a quorum at the local board meeting, which have been recommended by local boards and reviewed by our staff with the authority of the Commission. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of permit applications for a new permit, or applications for changes in location or ownership or both of existing permits, excluding permit #RR49-31463, pending final floor plan inspection by the Indiana State Excise Police, which were either recommended for approval by local boards or where a quorum was not present, and reviewed by at least two Commissioners. Commission Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of applications for catering. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years, which have been reviewed and recommended by a Commissioner as appropriate for escrow. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the new and renewal carrier permits. Commissioner Maginn seconded. The motion was unanimously approved.

Six hundred ninety-six (696) renewals approved, sixty-one (61) new and/or transfer applications approved, fourteen (14) permits approved for catering, two (2) permits approved for first year escrow, eight (8) permits approved for second year escrow, two (2) permits approved for third year escrow, five (5) permits approved for fourth year escrow, one (1) permit approved for fifth year escrow, one (1) new carrier permit approved, and twelve (12) renewal carrier permits approved.

#### **RENEWAL LETTERS AND WAIVER OF FEES**

Vice Chairman Coleman moved to approve the renewal and fee waived letters of extension for the preceding weeks. Commissioner Maginn seconded. The motion was unanimously approved.

#### **APPLICATIONS FOR DISCUSSION**

RR64-31493 PAVILION PARTNERS, LLC – Commissioner Grubb moved to remand the new application to the local board. Commissioner Maginn seconded. The motion was unanimously approved.

\*\*See transcript for discussion.

RR49-31463 FOUNTAIN TAP, LLC – Commissioner Grubb moved to continue this matter to the next meeting. He stated there are questions regarding the location of this application to churches. Commissioner Maginn seconded. The motion was unanimously approved.

RR23-04382 FARLEY'S CORNER PUB, LLC – Vice Chairman Coleman moved to uphold the local board's recommendation and deny the renewal. Commissioner Maginn seconded. The motion was unanimously approved.

DL45-29806 MILLER BEACH MARKET PLACE, LLC – Commissioner Maginn stated this was a 3-0 recommendation to deny because the permittee was a no show at the local board meeting. There are pending violations still on the record. The Commissioner stated there is a question as to whether or not this business is still open.

Commissioner Maginn moved to uphold the local board's recommendation to deny the renewal. Vice Chairman Coleman seconded. The motion was unanimously approved.

RR92-27827 MNS, LLC – Vice Chairman Coleman stated there were only two members of the local board present, which is not a quorum.

Vice Chairman Coleman moved to remand this to the local board. Commissioner Maginn seconded. The motion was unanimously approved.

RR45-05539 ENCOMPASS ENTERTAINMENT, INC. – Executive Secretary Rothenberg stated this was a 3-1 recommendation to approve at the local board. There is a question regarding the ownership of the permit. The Executive Secretary recommended the Commission remand this to the local board for further investigation.

Commissioner Maginn moved to uphold the recommendation of the Executive Secretary to remand this to the local board. Vice Chairman Coleman seconded. The motion was unanimously approved.

### **INACTIVE FILES**

Commissioner Grubb moved to make seven (7) permits inactive. Five permits are not subject to auction and two permits are subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

### **OLD BUSINESS**

No Old Business

### **NEW BUSINESS**

### **REVOCATION OF EMPLOYEE PERMITS**

Commissioner Grubb moved, pursuant to IC 7.1-3-18-9.5, to order the following employee permit holders to complete an alcohol evaluation and treatment program within the next six months and provide proof of same to the Commission. The Commissioner further moved that these revocations be rescheduled for the January 19, 2016 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

Robert Marsden, BR1803160; Bethelyn Morris, BR1507277; Taylor Isaac, BR1799593; Christopher Koepp, BR1709879; Lauren Drake, BR1760687

Commissioner Grubb moved to revoke the following employee permits that do not fall under IC 7.1-3-18-9.5. Commissioner Maginn seconded. The motion was unanimously approved.

Kristin Hoffmann, BR1675102; Autumn Williams, BR1566558

### **POLICY DETERMINATIONS**

No Policy Determinations

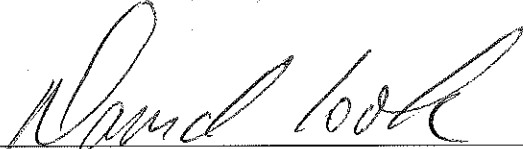
**ANNOUNCEMENTS**

No Announcements

**ADJOURNMENT**

Commissioner Maginn moved to adjourn the meeting. Vice Chairman Coleman seconded. The motion was unanimously approved.

Approved this 4<sup>th</sup> day of August, 2015.

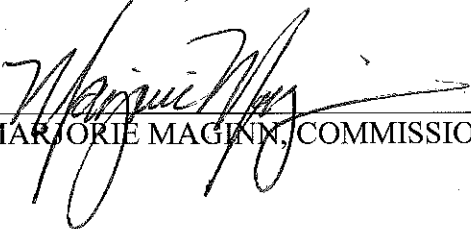


DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN

DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER

1 Chairman Cook RR64-31493 Pavilion Partners, LLC, new application for local board  
2 voting. It was a 2-2 tie. We continued this from the June 23<sup>rd</sup> meeting  
3 for some additional inquiry about what was going on with this  
4 particular permit application and reset it today. I'm going to open it up  
5 for discussion. I will indicate to everybody that I drove up to Chesterton  
6 and went to the pavilion in Sand Dunes Park. I met with the park  
7 manager. Saw the facility that's in question here. Kind of saw the  
8 premises and talked and spent a considerable period of time with park  
9 manager and brought that information back and obviously shared it with  
10 the commission members. I'll open the floor for discussion.

11 Commissioner Maginn I had some questions about the application and went over the  
12 application in some detail. I note that the ownership is listed as  
13 Pavilion Partnership LLC. On the application you can check a box if  
14 you are a sole owner and a sole owner is listed and is listed as an  
15 Indiana resident---that name being Charles L. Williams, with over 60%  
16 interest. There's another question on the application and it asks if any  
17 members of the LLC have more than 41% interest/ownership without a  
18 state residence and that question is marked, "yes". So there is a  
19 discrepancy there on the application and a significant one for me as to  
20 who the owner of Pavilion Partners LLC is or are. I also note that I  
21 went on to the DNR website and looked at the lease that they have for  
22 this property in question. It lists three principles, and those are:  
23 Charles L. Williams, Peter Kaifas, sorry about the pronunciation there,  
24 and Erik Froelich. These discrepancies need to be clarified on the

25 application for the alcohol permit. I'd also like to note that if there are  
26 additional owners, then when the application is reviewed again and  
27 answered again, that it should be answered for each question pertaining  
28 to each owner, not just the one owner. There were two minor issues on  
29 the application---one in Step 2. It asks about annual food sales and I  
30 just note that there is a minor total that needs to be corrected on Step 2.  
31 On Step 3 of the application, it's about qualifications of the LLC  
32 section. That final piece of Step 3 is incomplete. It is without initials.  
33 Those were my major questions about the application. I also listened to  
34 the hearing and we have gotten some significant letters against this  
35 application since our last meeting. The issues raised from those letters  
36 appear to pertain to the applicant---several questioning that the  
37 applicant may not meet the requirements due to a high and fine  
38 reputation. Also, things pointed out in the letters appear to be  
39 questioning if the need for the services at the location are desired and if  
40 the neighbors and the neighborhood desire the services and particularly  
41 a safety aspect there. The local board meeting didn't address some  
42 information gaps and inaccuracies on a reason for a vote from the local  
43 board that I noted from listening to the hearing. One commissioner  
44 stated that he did not have enough information to vote. Another stated  
45 that the remonstrators were not significant. I feel that those need...that  
46 information gap for the one commissioner and then inaccuracy for the  
47 reason to vote should be looked at. Then, a couple other things, if I  
48 may?

49 Cook

Sure.

50 Maginn

Just to clarify some questions that came up for me after this was discussed at the last meeting. There were questions about the new law that had just been passed and what that meant for this application, particularly the law that was passed, Senate Enrolled Act 515, from this session. It's Indiana Code 14-18-2-3. It says that alcohol may be served within 100 feet of the pavilion and the pavilion parking lot. I went back at that law and talked to our legal counsels about that law and I think I'm clear now on that piece that 100 feet around the building and 100 feet around the parking lot. Once an underlying permit, or if an underlying permit is issued, then there could be alcohol served around that 100 feet area. That 100 feet area, if there is any alcohol, any event where there would be alcohol served there, it would need a special permit from us. I note that it would also need approval from DNR, from their lease. Each time there would be any sort of special event, or events in that area, we would require a special permit and nothing could be served there until an underlying permit would be issued. The application type on the current application before us it is marked that they are applying for on-premise consumption. So, there is no carry-out that would be allowed from the facility. I also note that there was a Public Law 71, passed in 2002, that permitted alcohol to be sold at retail from the Pavilion, but not in the park itself. Lastly, there were some questions about the catering hall, if there is a new building built there, which is permitted, I note, under the DNR lease. But, it is not



73 part of the current application before us. So, if there is a desire at some  
74 point and time to build a catering hall, then, if an underlying permit is  
75 issued, there would have to be an additional authority from an  
76 application approved by this Commission for alcohol to be sold at that  
77 catering hall and there would also be a separate inspection process that  
78 would happen under that catering hall.

79 Cook I listened to the local board hearing, because we all did. I was troubled  
80 by the representation at the local board that one of the "yes" votes was  
81 based on the claim that there had been no overwhelming remonstrance  
82 against the permit. Number one, I don't believe that is the standard for  
83 that inquiry. And number two, I need the record to reflect that while  
84 there were approximately three---I think there were four people who  
85 signed up in remonstrance there, one was signed up as a remonstrance  
86 against it, although he admitted he was just trying to get more  
87 information. Since that time, I have received over 264 remonstrances  
88 against this. That's including the original 38, 37 or 38, that were sent to  
89 me prior to the first meeting on this. I made a list here of those  
90 remonstrances, emails and letters that were sent against it as of the June  
91 23<sup>rd</sup> hearing and then post June 23<sup>rd</sup>. Today, I received an additional 20  
92 that didn't make the list, but their remonstrances are included. I printed  
93 all of these out. There's 264 of these. I'm going to make that officially  
94 part of this record right now. I want that to be submitted. I was also  
95 troubled by the fact that one of the commissioners asked for additional  
96 information and I think that on a topic as important to the community as

97 this, as well as to the State of Indiana, that the commissioners should  
98 have the ability to have their questions answered. So, I'm kind of  
99 troubled that that wasn't extended---that additional time. There were  
100 also claims that were made in a lot of the remonstrance emails and  
101 letters that inadequate notice was given. Now, I think notice was given  
102 pursuant to the statute. At the same time, the hearing was held on a  
103 weekday, during the morning and difficult for a lot of people to attend.  
104 I, along with everybody on this commission, are strong believers of due  
105 process and due process, at least, is notice and opportunity to be heard.  
106 So, I think it's extremely important that this permit that has generated  
107 so much community interest be properly vetted and everybody given  
108 notice and opportunity to be heard. So, while the board, or the  
109 Commission here is ultimately the final arbiter and I don't want  
110 anybody to think we're trying to dodge the bullet here on a sensitive  
111 issue here, we'll accept our responsibility. But, also, the system seems  
112 to have been designed to give great deference and the Commission is to  
113 give deference to the local boards, who are supposed to conduct  
114 hearings, provide due process to those people who wish to be heard---  
115 both for and against, then make their recommendations to the board. I  
116 really think that there has been a considerable amount of remonstrance  
117 against this. I think the local board, who tied, 2-2, to this issue, should  
118 be given an opportunity to consider all of these things that have been  
119 submitted, as well as information that would be submitted in favor of it.  
120 The local board people should have their opportunity to have their

121 questions answered. To the issues that were raised by Commissioner  
122 Maginn, I think are important issues that need to be vetted.

123 Commissioner Grubb Mr. Chairman, I would move to remand this back to the local board  
124 with a caveat that extensive publication and public notice of the new  
125 hearing, along with a time appropriate for people who work to be able  
126 to attend and be relayed to the local board, along with the concerns that  
127 Commissioner Maginn has raised.

128 Maginn Second.

129 Cook All right. It has been moved and seconded that this permit be remanded  
130 back to the local board with instructions from the Commission to  
131 answer certain questions and provide opportunity for all parties, both  
132 for and against this, to be properly heard and then a vote taken. Is there  
133 any further discussion on that? All in favor, then, say, aye.

134 Maginn Aye.

135 Grubb Aye.

136 Vice Chairman Coleman Aye.

137 Cook Aye. Opposed, say, no. Motion carries. I will propose then to author a  
138 letter to the local board, with the Commission's approval, outlining the  
139 things we've talked about here, so they will have specific instructions  
140 about what they need to do from this point forward. Then, hopefully,  
141 they will be able to make some sort of decision and it will come back  
142 here and we will either approve or deny their decision.

143