

ALCOHOL AND TOBACCO COMMISSION

November 4, 2020

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes –

October 20, 2020

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

5. Consideration of Applications -

310 renewals

26 new/transfers

9 catering

17 new/renewal carriers

9 new/renewal direct wine shippers

1 transfer e-liquid

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

7. Applications for Discussion –

DL74-32121 Dolgencorp, LLC – new with LB voting 4-0 to deny

DL72-31979 Dolgencorp, LLC – new with LB voting 3-0 to deny

DL72-31978 Mahakaii Ma Inc. – new with LB voting 3-0 to deny

RR44-36717 and RR44-36716 Toch, LLC – new with LB voting 4-0 to approve. Remonstrator.

8. Inactive Files –

RR45-34041 City of Hammond, Department of Redevelopment – reinstate

10 permits not subject to auction

9. Old Business -

RR84-30685 Diamond Shine, Inc.

10. New Business –

11. Policy Determinations –

12. Announcements -

Retail carryout renewal requests

Group purchase agreement updates

New auction date – December 16th at 10 am.

Online salesman applications

Product management plans - form

13. Adjournment

MINUTES

ALCOHOL AND TOBACCO COMMISSION

NOVEMBER 4, 2020

CALL TO ORDER/NOTING OF QUORUM

Chairman Cook called the meeting to order and noted the quorum and the attendance. Present remotely were Vice Chairman Krauss, Commissioner Maginn, Commissioner Grubb, Prosecutor Harrison, and Executive Secretary Allen.

By consent, the Commission, regarding items on the agenda that require signatures, gave permission for Kim Chew to initial approval for the commissioners.

DISPOSITION OF MINUTES

Vice Chairman Krauss moved to approve the minutes from the October 20, 2020 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Chairman Cook stated Prosecutor Harrison submitted 39 Parties' Agreed Dispositions, totaling \$16,725.00 in fines, for the Commission's approval.

Vice Chairman Krauss moved to approve the PAD forms submitted by the Prosecutor. 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, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same, pending any escrow hearings, and the inclusion of these lists as part of the minutes. 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 application for changes in location, ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners and hereby move for approval of same, pending final floor plan approval by the Indiana State Excise Police and escrow, if needed, and inclusion of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the catering applications. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the carrier applications. Commissioner Maginn seconded. The motion was unanimously approved.

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

Commissioner Grubb moved to approve the transfer of an e-liquid permit. Commissioner Maginn seconded. The motion was unanimously approved.

RENEWAL LETTERS AND WAIVERS OF FEES

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

APPLICATIONS FOR DISCUSSION

DL74-32121 DOLGENCORP, LLC – Chairman Cook noted this is a new application with the local board voting 4-0 to deny.

Commissioner Maginn stated this was continued from the last meeting in order to allow time for the Commission to receive and review the addresses of the remonstrators. All of them live in Spencer County.

Commissioner Maginn moved to uphold the local board's recommendation to deny the new permit. Commissioner Grubb seconded. The motion was unanimously approved.

DL72-31979 DOLGENCORP, LLC – Chairman Cook noted this is a new application with the local board voting 3-0 to deny.

Commissioner Maginn stated there were numerous remonstrators at the local board hearing. Scott County has had a difficult time with substance abuse issues and has a long history of opposing applications for alcohol sales in grocery stores or pharmacies. The remonstrators love the store, but just do not want the alcohol sales there.

Commissioner Maginn moved to uphold the local board's recommendation to deny the new permit. Commissioner Grubb seconded. The motion was unanimously approved.

DL72-31978 MAHAKAI MA, INC. – Chairman Cook noted this is a new application with the local board voting 3-0 to deny.

Commissioner Maginn stated this another application for retail sales of alcohol in Scott County. Remonstrators have the same objection to this application.

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

RR44-36717 AND RR44-36716 TOCH, LLC – Chairman Cook noted these are new applications with the local board voting 4-0 to approve. There was a remonstrator present at the local board hearing.

Commissioner Maginn stated the applicant has operated two other successful businesses. There is a lot of support from the local community for this new business, including the Sheriff, Fire Department, County Commissioners, Chamber of Commerce, and other businesses in the area. The remonstrators have concerns about traffic, noise, parking, and drinking.

Vice Chairman Krauss wanted to point out that he was very impressed with both sides and the fact that they gathered information and presented it to the board in a clear fashion that made the review easy and balanced.

Commissioner Maginn moved to uphold the local board's recommendation to approve the new permit. Commissioner Grubb seconded. The motion was unanimously approved.

INACTIVE FILES

Vice Chairman Krauss moved to make 10 permits inactive. All ten permits are not subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

RR45-34041 CITY OF HAMMOND, DEPARTMENT OF REDEVELOPMENT – Chairman Cook noted this permit was made inactive, in error. Renewals were filed.

Vice Chairman Krauss gave kudos to Doug Devine, the permit processor who brought this to the Commission's attention.

Vice Chairman Krauss moved to reactivate the permit. Commissioner Maginn seconded. The motion was unanimously approved.

OLD BUSINESS

RR84-30685 DIAMOND SHINE, INC. – Chairman Cook stated the Commission received a request for reinstatement of this permit that was made dead, due to the end of the allowable time for the permit to be in escrow. This matter was put on the Agenda under Old Business and not under discussion because the Commission has no authority to overturn the law regarding the reversion of these permits after the drop-dead date and the Chairman wanted to make clear the situation regarding this permit.

The permit was placed in escrow in 2015. Over the course of the escrow period there were failed attempts to transfer the permit and appeals were filed and withdrawn. The permit was subject to a drop-dead date to put the permit into use of June 30, 2020, which was lengthened under the Governor's Executive Order to September 30, 2020. Renewals were not filed. The permit was deactivated and reverted to the Commission on September 30, 2020, by law.

In an attempt to persuade the Commission to reinstate the permit and allow transfers that were filed on October 15, 2020, arguments were made that exceptional circumstances existed because the 3rd party transferee was not aware of the drop-dead date and that the permit would revert to the Commission on September 30th.

After a thorough review of the record, it shows the Commission timely filed notices to the permittee of the status of the permit, including the drop-dead date. There was a courtesy notice given to the 3rd party transferee that renewals needed to be filed, which is not required. The Commission did everything right in this matter. All parties have been notified.

NEW BUSINESS

No New Business

ANNOUNCEMENTS

2020 ATC PERMIT AUCTION – Chairman Cook stated the auction is December 16, 2020 at 10 a.m. in the IGCS Auditorium. The first advertising will post on November 13th, the second will post on November 20th and pre-bid applications are due on December 2nd.

GROUP PURCHASING AGREEMENTS – Information regarding these agreements is available on our online facility search. Letters have been sent to the agents asking for verification of the ATC records for each group. The agents are asked to submit a new agreement, if the current one is no longer valid. The Group Purchasing Forms are available on our website.

ONLINE SALESMAN PERMITS – Salesman permits can now be obtained online from our website. Applicants are asked to enter the permit number and permit type of the business the salesman represents. It is important to inform the applicants of this information to ensure a smooth application process.

PRODUCT MANAGEMENT PLAN FORMS – The forms have been updated. Please make sure your clients are aware and file the plan as required.

RETAIL CARRY-OUT RENEWAL REQUESTS – During this pandemic, Governor Holcomb has given most retail businesses temporary carry-out privileges and granted a waiver from the law stating that no more than 40% of gross alcohol income is permitted for carry-out. Those will remain in place until a future announcement. For those permittees who have permanent carry-out under the subtype Gross Retail Income Required, during this pandemic are required to submit the carry-out renewal form, but not the income information. For permittees who submit the renewal form that are in this category, and do not submit the financial information, or do give the financial figures and they exceed 40% for carry-out, they will remain with carry-out and remain in the Gross Retail Income Required subtype. Once the pandemic lifts, there will be further announcements regarding the period for meeting the no more than 40% of alcohol income from carry-out.

NOVEMBER 17, 2020 COMMISSION MEETING – We will hold the next meeting as a Teams meeting. The link will be made available on our website.

ADJOURNMENT

Vice Chairman Krauss moved to adjourn the meeting. Commissioner Grubb seconded. The motion was unanimously approved.

Approved this 17th day of November, 2020.

DC

DAVID COOK, CHAIRMAN

JK

JOHN KRAUSS, VICE CHAIRMAN

DG

DALE GRUBB, COMMISSIONER

MM

MARJORIE MAGINN, COMMISSIONER