

**STATE OF INDIANA
BEFORE THE ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
J.R. HARTY, INC.)	
1101 S. WALNUT STREET)	PERMIT NO. RR1807268
MUNCIE, DELAWARE COUNTY)	
)	
Permittee.)	
)	

**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. BACKGROUND OF THE CASE

J.R. Harty, Inc, 1101 S. Walnut Street, Muncie, Indiana (Permittee), permit number RR1807268 (Permit), is the applicant for renewal of an Alcohol and Tobacco Commission (Commission) beer, wine, and liquor retail restaurant permit in an incorporated area, also known as a type 210 permit. The application was assigned to the Alcoholic Beverage Board of Delaware County (Local Board). Local Board held a virtual hearing via Microsoft Teams on March 4, 2021, due to the ongoing public health emergency, and voted 4-0 to recommend denial with respect to Permit. On April 6, 2021, Commission upheld the recommendation of Local Board to deny Permit.

On April 21, 2021, Permittee filed a timely request to appeal Commission's denial. On August 30, 2021, notice of an appeal hearing was mailed to Permittee and all remonstrators. The matter was assigned to Chairwoman Jessica Allen as hearing judge (Hearing Judge). The matter was set for hearing on October 4, 2021 at 1:30 pm. The hearing was adjourned and continued to October 29, 2021 at 10:00 a.m. Hearing Judge took judicial notice of the entire contents of the file related to this cause. Having been duly advised of the facts and law at issue, Hearing Judge now submits these Proposed Findings of Fact and Conclusions of Law to the full Commission

for its consideration.

III. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before Local Board in favor of Permittee in this cause:
1. Yevonne Thompson, Muncie Human Rights Commission;
 2. Randa Coats, Manager of establishment and witness for the Permittee;
 3. Samuel Beasley, Attorney for Permittee;
 4. Adrian Kirtz, Employee and/or possible unlisted manager for the Permittee; and
 5. Eric C. Welch, Attorney for Permittee
- B. The following evidence was introduced and admitted before Local Board in favor of Permittee in this cause:
- None.
- C. The following individuals testified before Local Board against Permittee in this cause:
1. Debra Simmons, Neighbor;
 2. Lisa Hartman, Neighbor;
 3. Eugene Hahn, Neighbor;
 4. Chris Hiatt, Property Owner;
 5. Chief Nathan Sloan, Muncie Police Department (MPD), Chief;
 6. Jason Haney, Business Owner, Resident;
 7. Jenna Ashby, Habitat for Humanity;
 8. Kevin Clark, Manager for Apartments;
 9. Leslie McCrory, Neighbor; and
 10. Barry Zachary, Property Owner.
- D. The following evidence was introduced and admitted before Local Board against the Permittee in this cause:
1. Remonstrator's Exhibit A - MPD Calls for Service through Sept. 2020.
 2. Remonstrator's Exhibit B - MPD Incident Report for Calls of Service for Dec 20 and Jan 21.
 3. Remonstrator's Exhibit C - MPD Police Report Ref Shots Fired 20201227.

IV. EVIDENCE BEFORE THE APPEAL HEARING

- A. The following individuals testified before Hearing Judge in Favor of Permittee in this cause on October 4, 2021:
1. Christopher Thorpe, Proposed Transferee of Permit; and
 2. Eric C. Welch, Attorney for Permittee.
- B. The following evidence was introduced and admitted before Hearing Judge in favor of Permittee in this cause:

- a. None.
- C. The following individuals testified before Hearing Judge in Favor of Permittee in this cause on October 29, 2021:
1. Randa Coats, Prior Manager of Permittee; and
 2. Eric C. Welch, Attorney for Permittee.
- D. The following evidence was introduced and admitted before Hearing Judge in favor of Permittee in this cause:
1. Permittee's Exhibit 1 – Detail Call for Service Reports, 2019;
 2. Permittee's Exhibit 2 – Detail Call for Service Reports 2020; and
 3. Permittee's Exhibit 3 – Randa Coats' handwritten summary of call sheets for incidents attributed to other alcohol permittees in Muncie, Indiana.
- E. The following individuals testified and/or were present before Hearing Judge against Permittee in this cause on both October 4, 2021, and October 29, 2021:
1. Chief Nathan Sloan, MPD, Chief; and
 2. Jenna Ashby, Habitat for Humanity.

FINDINGS OF FACT

1. J.R. Harty, Inc., d/b/a Uggly's 1101 S. Walnut Street, Muncie, Indiana, permit number RR1807268, is the applicant for renewal of Permit.(ATC File).
2. Owners of Permittee did not appear at Local Board or either appeal hearing. (Local Board Hearing; Appeal Hearing 10/4/21; Appeal Hearing 10/29/2021).
3. Ten (10) persons appeared before the Local Board to remonstrate against the renewal of Permit. Remonstrators also presented evidence to indicate that Permittee's business has become a public nuisance and burden to local law enforcement. (Local Board Hearing; ATC File).
4. Remonstrator Chief Nathan Sloan of the MPD submitted incident reports to the Local Board. (Remonstrator's Exhibits A, B, and C).
5. As the hearing was conducted virtually, Permittee was not able to review the incident reports, nor respond to the suggestion that Permittee was responsible for the activity

contained therein. (Local Board Hearing; Appeal Hearing 10/4/2021).

6. At the October 4, 2021 hearing, Permittee, through counsel, was provided copies of the exhibits submitted by remonstrators to Local Board. (Appeal Hearing 10/4/2021).

7. Hearing was adjourned and reconvened on October 29, 2021, to give Permittee an opportunity to review and respond to the exhibits submitted by remonstrators to Local Board. (Appeal Hearing 10/4/2021).

8. Permittee submitted Detail Call for Service Reports related to Permittee or Permittee's address for calendar years 2019 and 2020. (Appeal Hearing 10/29/2021; Permittee's Exhibits A and B).

9. Randa Coats, prior manager of Permittee, reviewed each of the incidents and demonstrated that some activity was not properly attributable to the conduct of Permittee. (Appeal Hearing 10/29/21).

10. Some activity occurred in the parking lot across the street from Permit premises which was leased by Permittee and not used by any other business during the hours in question. (Appeal Hearing 10/29/21).

11. Randa Coats submitted a summary of incident reports issued by the MPD giving her opinion that the number of incidents at similarly situated establishments was either equal to or greater than the number of incident reports provided by remonstrators against Permittee. (Appeal Hearing 10/29/2021).

12. Little weight is given to Permittee's Exhibit 3 because Permittee did not submit Detail Call for Service Reports for the similarly situated establishments and did not have direct knowledge of the incidents. (Appeal Hearing 10/29/2021; Permittee's Exhibit 3).

13. Randa Coats testified that prior to the current administration, the Delaware

County Sheriff's Department partnered with the establishment, where off duty officers provided security. (Appeal Hearing 10/29/2021).

14. Randa Coats testified to the to the remedial efforts made by the Permittee to enhance security efforts, including hiring private security and increasing the height of a fence. (Appeal Hearing 10/29/2021).

15. Remonstrators testified to problems created by incidents at Permit premises or in parking areas used exclusively by Permittee, including bullets entering the bedroom of a remonstrator while he was in bed. (Local Board Hearing).

16. Christopher Thorpe, the managing Member of Illusions Bar and Grill, LLC, stated that he has taken control of the establishment which Mr. Thorpe describes as a neighborhood bar and grill focusing on retail food sales. Mr. Thorpe has invested significant resources in Permit premises. (Appeal Hearing 10/4/2021).

17. Mr. Thorpe hopes to transfer the permit to a business entity owned by him. (Appeal Hearing 10/4/2021).¹

18. Two violations have been issued to against Permittee since the Local Board hearing, one of which remains unresolved with the Commission prosecutor. (ATC File).

19. Christopher Thorpe is not listed as a manager for Permittee. (ATC File).

20. Christopher Thorpe is not listed as an owner of Permittee. (ATC File).

21. Adrian Kirtz was the person Randa Coats believed was in charge of

¹ Permittee requested to be allowed to transfer Permit as to ownership only. This request was considered and denied by the Commission on July 20, 2021. (ATC File).

operations of Permittee while she was manager. (ATC Hearing 10/29/2021).

22. Adrian Kirtz was responsible for negotiating parking leases for nearby lots. (ATC Hearing 10/29/2021).

23. Adrian Kirtz negotiated the proposed Sale of Permit to Mr. Thorpe. (ATC Hearing 10/4/2021).

24. Adrian Kirtz is not listed as a manager of Permittee. (ATC File).

25. Adrian Kirtz is not listed as an owner of Permittee. (ATC File).

26. Testimony was presented of Mr. Kirtz prior felony convictions that, if properly disclosed, may disqualify Mr. Kirtz from holding, owning, or managing Permit. (ATC Hearing 10/29/2021).

27. The number of critical incidents at Permit premises or in parking areas used exclusively by Permittee is greater for the Permittee than similarly situated alcohol Permit holders in Muncie, Indiana. (Appeal Hearing 10/29/2021).

28. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.

2. The permit application was submitted pursuant to Ind. Code § 7.1-3-1-4.

3. The Commission is authorized to act upon proper application. *Id.*

4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-

7(a).

5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file. Ind. Code§ 7.1-3-19-1 1(a); 905 IAC 1-36-7(a), -37-1 1(e)(2); *see also* Ind. Code§ 4-21.5-3-27(d).

6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code§ 4-21.5-3-27(d).

7. It is unlawful for a person to either:

a. manage; or

b. buy when the transfer of the permit is contingent upon terms of a contract or an agreement;

a licensed premises for the sale of alcoholic beverages, unless the person has filed a valid manager's questionnaire with the commission. Ind Code § 7.1-5-9-15.

8. Although Permittee could not adequately respond to documents remonstrators submitted against Permittee at Local Board hearing held virtually via Microsoft Teams, Permittee was provided the documents and given opportunity to respond at a *de novo* appeal hearing. (Appeal Hearing 10/4/2021; Appeal Hearing 10/29/2021).

9. The decision of Local Board was not based exclusively on Remonstrator's Exhibits A, B, and C. Local Board also considered management issues and testimony of Remonstrators. (Local Board Hearing).

10. The Commission may reverse a local board's action in denying an application for a permit only if it finds that the local board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right,

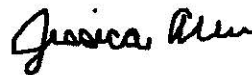
power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.

11. The decision of Local Board was not arbitrary and capricious.

12. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Delaware County Local Board resulting in a 4-0 vote to recommend denial of the application for the permit number RR1807268, was supported by substantial evidence and was not arbitrary and capricious. The Alcohol and Tobacco Commission denies renewal application of J.R. Harty, Inc., d/b/a Uggly's 1101 S. Walnut Street, Muncie, Indiana, permit number RR1807268. The Commission additionally denies Permittee's renewed request to transfer Permit as to ownership only.

DATED: June 22, 2022.



Jessica Allen, Hearing Judge

Distribution:

Permittee, by counsel

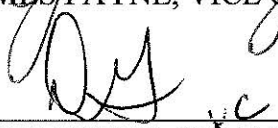
Remonstrator

Approved this 19th day of July, 2022.

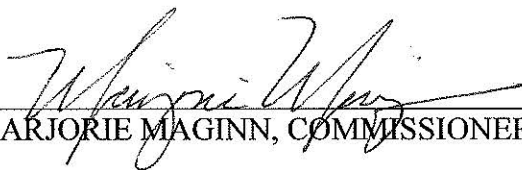
JESSICA ALLEN, CHAIR



JAMES PAYNE, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER