

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
CAPITAL CONNECTION, LLC)	PERMIT NO. RR7934150
140 HOWARD AVENUE)	
WEST LEAFAYETTE, IN 47906)	
)	
Permittee.)	

CORRECTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Capital Connection, LLC, permit number RR7934150 (Permittee/Applicant), is the permittee applying for the renewal of a beer, wine, and liquor restaurant (210) permit in an incorporated area to be issued by the Alcohol and Tobacco Commission (ATC). The application was assigned to the Alcoholic Beverage Board of Tippecanoe County (Local Board). The Permittee's matter was heard on March 9, 2022, where it was denied by a vote of 4-0. On March 15, 2022, the Commission adopted the findings of the Local Board and denied the permit. The Permittee received notice of the Commission's decision on March 19, 2022. On March 30, 2022, the Permittee timely filed for an appeal hearing regarding the Commission's denial.

The matter was set for hearing on September 16, 2022, and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing Officer also 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, the Hearing Officer now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

1. The following individuals testified before the Local Board in favor of the Permittee in this cause:
 - A. Mark Multer, attorney for permittee
 - B. Antonio Mednoza, general manager for permittee
 - C. Gabriel Magallanes
 - D. Vilma Pedder, owner of permittee

2. The following evidence, other than testimony, was introduced and admitted before the Local Board in favor of the Permittee in this cause:
 - A. None¹

3. The following individuals testified before the Local Board against the Permittee in this cause:
 - A. None

4. The following evidence was introduced and admitted before the Local Board against the Permittee in this cause:
 - A. None

III. EVIDENCE BEFORE THE COMMISSION

1. The following individuals testified before the Commission in favor of or appeared in support of the Permittee in this cause:
 - A. Vilma Pedder, owner of permittee
 - B. Antonio Mendoza, assistant general manager of permittee
 - C. Gabriel Magallanes
 - D. Valerie Beltran, permittee's daughter and employee of permittee
 - E. Dennon Assava
 - F. Jeff McKean, attorney for permittee

2. The following evidence was introduced and admitted before the Commission in favor of the Permittee in this cause:
 - A. Exhibit #1 – Certificate of Organization of Capital Connection, LLC
 - B. Exhibit #2 – 6 photographs
 - C. Exhibit #3 – Binder labeled “La Hacienda El Sol Restaurant Our Business and Community Neighborhood Support”
 - D. Exhibit #4 – Affidavit of Scott Bedwell

¹ A binder of business records was reviewed by the local board but not admitted into evidence.

- E. Exhibit #5 – Stamp
- F. Exhibit #6 – Cup
- G. Exhibit #7 – La Hacienda Del Sol Alcohol Control Plan
- H. Exhibit #8 - Affidavit of Patrick Adams
- I. Exhibit #9 – Affidavit of Jerry O’Bryan

3. The following individuals testified before the Commission against the Permittee in this cause:

A. None.

4. The following evidence was introduced and admitted before the Commission against the Permittee in this cause:

A. None.

IV. FINDINGS OF FACT

1. Capital Connection, LLC, permit number RR7934150 (Permittee), is the applicant for the renewal of a beer, wine, and liquor restaurant (210) permit in an incorporated area to be issued by the Alcohol and Tobacco Commission (ATC). (ATC File).

2. Permit was originally issued to Permittee on May 16, 2018.

3. Since the original issuance of the permit, Indiana State Excise Police (ISEP) issued:

i. Two notices of warning; and

ii. Violations under three different ISEP case numbers, totaling nine violations of Title 7.1 of the Indiana Code.

4. On September 20, 2018, Permittee was issued a Notice of Warning for change of the approved floor plan (905 IAC 1-29-7).

5. On February 19, 2019, Permittee was issued Notice of Warning for failing to have a Manager's Questionnaire on file for Manager Luis Naverrette.

6. Survey for Alcohol Compliance checks are conducted with a minor entering an establishment and attempting to purchase alcoholic beverages.

7. On July 10, 2019, the Permittee passed a Survey for Alcohol Compliance check indicating that a minor was prevented from purchasing alcoholic beverages.

8. On November 30, 2020, ISEP received an anonymous complaint that underage customers were buying alcoholic beverages at Permittee's location.

9. On December 4, 2020, ISEP investigated the complaint and Permittee was cited for violations of:

- i. Ind. Code § 7.1-5-6-3, Employee acting without a permit;
- ii. Ind. Code § 7.1-5-7-8, Furnishing alcohol to a minor; and
- iii. 905 Ind. Administrative Code 1-12.1-2, Failure of employer to examine and/or display employee permit.

Permittee entered a settlement offer admitting the violations and agreeing to pay a \$1250.00 fine on March 19, 2021. This agreement was adopted by the Commission on April 6, 2021.

10. On December 20, 2021, ISEP conducted a Survey for Alcohol Compliance check at Permittee's premises which the business failed, and Permittee was cited for:

- i. Ind. Code § 7.1-5-6-3, Employee acting without a permit;
- ii. Ind. Code § 7.1-5-7-8, Furnishing alcohol to a minor; and
- iii. 905 Ind. Administrative Code 1-12.1-2, Failure of employer to examine and/or display employee permit.

Permittee entered into a settlement agreement admitting the violations and agreeing to pay a \$1500.00 fine on February 14, 2022. This agreement was adopted by the Commission on March 1, 2022.

11. On January 13, 2022, ISEP received a complaint from the Purdue University Police Department that minors were consuming alcoholic beverages at the Permittee's premises.

12. On January 15, 2022, ISEP received an anonymous complaint that minors were consuming alcoholic beverages at the Permittee's premises.

13. On January 21, 2022, ISEP investigated the complaints and issued violations for:

- i. Ind. Code § 7.1-5-7-8, Furnishing alcohol to a minor;
- ii. Ind. Code § 7.1-3-9-9, Scope of Permit – Liquor retailer, for purchasing alcoholic beverage from a retailer instead of a wholesaler; and
- iii. Ind. Code § 7.1-5-3-4, Bottles and containers (refilling prohibited).

Permittee entered into a settlement agreement admitting the violations and agreeing to pay a \$2000.00 fine and serve a one-day suspension. The agreement was adopted by the Commission on March 15, 2022. The suspension was served on March 22, 2022.

14. Permittee served a "tower" of margarita to a table without verifying the age of all patrons at the table. A minor was given a cup and allowed to consume alcoholic beverages. (ATC file.)

15. No remonstrators appeared at the Local Board hearing or the ATC Hearing. (Local Board Hearing; ATC Hearing).

16. Permittee terminated the employees involved in the violations December 4, 2020 and December 20, 2021. (ATC Hearing).

17. Seventy-six percent of gross sales is from the sale of food. (ATC Hearing.)

18. Permittee implemented the following procedures since the first violations were issued in December 2020:

- i. Permittee started using a stamp to identify patrons that are over twenty-one years of age sometime in 2021.
- ii. Permittee started only using clear plastic cups so the contents can be more easily identified sometime in 2021.
- iii. Permittee added an additional employee in approximately March 2022 to roam the restaurant to check that patrons with alcohol have the stamp identifying that they are over twenty-one years old. (ATC Hearing.)
- iv. Permittee stopped turning the lights down and adding music to the bar area creating a night club theme a couple of weeks before the March 2022 local board hearing. (Local Board Hearing.)
- v. As of September 2022, Permittee no longer serves “towers” of alcoholic beverages in the family dining area.
- vi. Training for all Permittee employees completed on September 15, 2022.
- vii. Written policy in Exhibit 7 created on September 15, 2022.
- viii. Bar area closes at 10:30 pm.

- ix. Permittee uses an ID checking guide with examples of out-of-state credentials.
- x. Patrons consuming alcoholic beverages must be seated.

(ATC Hearing. Local Board Hearing.)

19. Considerable evidence was presented as to the good moral character of the owner of permit holder. (ATC Hearing.)

20. The owner of the permit holder is of good moral character and good repute. (ATC Hearing.)

21. The Local Board voted 4-0 to deny the renewal. (Local Board Hearing).

22. 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 properly 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 § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(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 act as a bartender, waiter, waitress, or manager for a retailer permittee unless that person has applied for and been issued an appropriate permit. Ind. Code § 7.1-5-6-3.

8. It is unlawful for a person to recklessly, knowingly, or intentionally sell or furnish alcoholic beverages to a minor. Ind. Code § 7.1-5-7-8.

9. A retailer is prohibited from hiring a person unless the retailer has knowledge that the person holds an employee permit issued by the alcohol and tobacco commission. A retailer is required to examine the employee's employee permit application and record the name, address, permit number, and expiration date in a permit record. 905 IAC 1-12.1-2.

10. A liquor retailer is entitled to purchase liquor *only* from a permittee entitled to sell to the liquor retailer under Title 7.1. Ind. Code. § 7.1-3-9-9.

11. It is unlawful for a person to refill a bottle or container, in whole or in part, with an alcoholic beverage, or to knowingly possess a bottle or container that has been refilled, in whole or in part, with alcoholic beverages. Ind. Code § 7.1-5-3-4.

12. In determining whether to renew a permit, the Commission may consider whether the applicant refuses to comply with the provisions and the rules and regulations of the Commission. Ind. Code § 7.1-3-23-5.

13. 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.

14. An action is only arbitrary and capricious if it constitutes a willful or unreasonable action, is without consideration and in disregard of the facts and circumstances of the case, or is without some basis that would lead a reasonable and honest person to such action. *Indiana Board of Pharmacy v. Crick*, 433 N.E.2d 32, 39 (Ind. Ct. App. 1982).

15. "Substantial evidence" is evidence that is "more than a scintilla, but something less than a preponderance of the evidence." *State v. Carmel Healthcare Management, Inc.*, 660 N.E.2d 1379, 1384 (Ind. Ct. App. 1996); *Indiana Dep't of Natural Resources v. Lehman*, 378 N.E.2d 31, 36 (Ind. Ct. App. 1978). *See also Bivens v. State*, 642 N.E.2d 928, 949-950 (Ind. 1994). Substantial evidence has also been defined as "that relevant evidence which a reasonable mind might accept as adequate to support a conclusion." *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1091 (Ind. Ct. App. 1998).

16. In this case, the Local Board based their decision upon the number of violations taking place at the premises and cited to 905 IAC 1-27-2 and 905 IAC 1-27-3. (Local Board Hearing).

17. Permittee has been in business for approximately five (5) years. In that time, Permittee has accumulated two (2) notice of warning and three (3) violation cases, totaling nine (9) violations. Of those, the Permittee was cited for furnishing alcoholic beverages to minors three (3) different times in less than fourteen (14) months.


18. Many of the corrective actions were implemented following a third violation for furnishing alcohol to a minor. (ATC Hearing. Local Board Hearing.)

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

IV. RECOMMENDATION

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Tippecanoe County Local Board resulting in a 4-0 vote to deny the application for the permit number RR7934150, was supported by substantial evidence and the Alcohol and Tobacco Commission should uphold the local board and deny said application. The permit applied for herein is DENIED.

DATE: June 19, 2023.

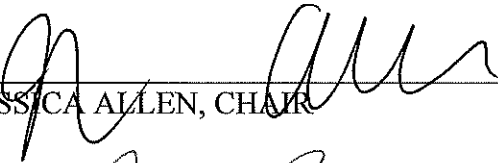

Jessica Allen, Hearing Officer

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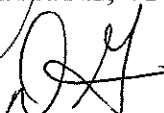
Approved this 20th day of June, 2023.



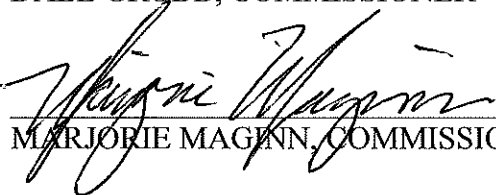
JESSICA ALLEN, CHAIR



JAMES PAYNE, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER