

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

<b>IN THE MATTER OF</b>	)	
<b>THE PERMIT OF</b>	)	
	)	
<b>AGUALINDA ENT.</b>	)	
<b>d/b/a EL VOLKAN NIGHTCLUB</b>	)	
<b>2705 W. WASHINGTON ST</b>	)	<b>PERMIT NO. RR49-12232</b>
<b>INDIANAPOLIS, IN 46222</b>	)	
	)	
<b>Applicant.</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Agualinda, Ent. d/b/a El Volkan Night Club, 2705 W. Washington St., Indianapolis, IN 46222, permit number RR49-12232 (Applicant), is the applicant for the renewal of a permit to sell beer, wine, and liquor, in a restaurant located in an incorporated area to be issued by the Alcohol and Tobacco Commission (Commission). The application was assigned to the Alcoholic Beverage Board of Marion County (Local Board). The Applicant's matter was heard on July 7, 2014, where it was denied by a vote of 4-0. On August 5, 2014, the Commission adopted the findings of the Local Board and denied the permit. On August 27, 2014, the Applicant moved to appeal the Commission's decision.

The matter was set for hearing on September 24, 2015, 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.

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

1. ~~Plan of operation dates 2009 filed with division of planning (Exhibit A);~~
2. Letter from Melanie Mullens, Senior Planner for Indianapolis Department of Metropolitan Development dated May 18, 2009 (Exhibit B); and
3. Various flyers advertising Club Volkan (Exhibit C).

#### IV. FINDINGS OF FACT

1. Agualinda, Ent. d/b/a El Volkan Night Club, 2705 W. Washington St., Indianapolis, IN 46222, permit number RR49-12232, is the Applicant for a renewal of a beer, wine, and liquor restaurant permit. (ATC File).

2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2. (Local Board Hearing; ATC Hearing).

3. The Applicant is of good moral character and of good repute in the community as required by 905 IAC 1-27-1. (ATC Hearing).

4. Applicant allowed premises to be operated under a Managers Questionnaire (Lucia Reyes) from July 2013 through June 2014, the time period in which IMPD had calls concerning the premises. (ATC Hearing).

5. Applicant was under the impression that the premises was in the process of being sold to Lucia Reyes, which was not the case, and allowed her to run it as she saw fit, which created a negative situation for IMPD. (ATC Hearing)

6. "Club Diamond" promoted an after-hours adult entertainment club on Sunday nights, which has been discontinued since June 2014. (ATC Hearing).

7. Applicant has since regained control of the business and intends to operate as a family restaurant seven days per week, from 7:00 a.m. to 9:00 p.m., and as a club on Friday and Saturday nights from 10:00 p.m. to 3:00 a.m.

7. 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.

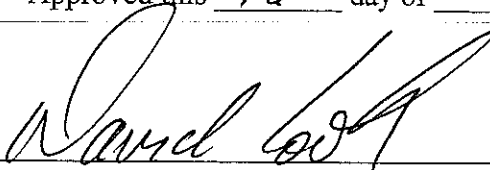
8. In this case, the Local Board based their decision upon the input from Sgt. Carter concerning the operations of the premises under the promoter, who no longer operates under the Applicant's license. (Local Board Hearing).

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

#### IV. RECOMMENDATION

On July 27<sup>th</sup>, 2014, the local board denied this application for renewal. The denial was based solely on Sgt. Carter's evidence concerning the premises operating as an after-hours adult entertainment club, a club that was being operated by a promoter who was, and still is, well-known for allowing things to get out of hand, and the number of police runs to major disturbances to the premises. However, since the promoter was removed and the Applicant has operated the premises himself (for a bit over a year), Sgt. Carter reports that there have been no incident and is confident that as long as the Applicant remains involved with the operations, he would recommend allowing the Applicant to keep the permit. Based on that recommendation, the decision of the Local Board and Commission shall be overturned and the Applicant be given a one-year, strict-compliance renewal of the permit. Should the Applicant receive a

Approved this 16<sup>th</sup> day of December, 2015.

  
\_\_\_\_\_  
DAVID COOK, CHAIRMAN

  
\_\_\_\_\_  
DAVID COLEMAN, VICE CHAIRMAN

  
\_\_\_\_\_  
DALE GRUBB, COMMISSIONER

  
\_\_\_\_\_  
MARJORIE MAGINN, COMMISSIONER