

STATE OF INDIANA
BEFORE THE ALCOHOL & TOBACCO COMMISSION

IN THE MATTER OF)	
THE PERMIT OF:)	
)	
R&L SEARS CUT RATE LIQUORS, INC.)	PERMIT NO. DL45-13168
d/b/a A-1 LIQUORS)	
d/b/a 3AM LIQUORS)	
5707 COLUMBIA AVENUE)	
HAMMOND, IN 46320)	
Applicant)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background of the Case

The Applicant, R & L Sears Cut Rate Liquors, Inc., d/b/a A-1 Liquors¹, aka 3 AM Liquors², aka R & L Sears Cut Rate Liquors³ (“Applicant”) is the applicant for the renewal of Type 217 permit #DL45-13168 (“Permit”.) The Applicant filed its renewal application, which was assigned to the Alcoholic Beverage Board of Lake County (“Local Board”) for review. The Local Board recommended the denial of the renewal of the permit by a vote of 3-0. The Alcohol and Tobacco Commission (“Commission” or “ATC”) unanimously affirmed the Local Board’s recommendation.

Applicant timely requested an appeal hearing before the Commission, and the matter was assigned to Commission Hearing Judge N. Davey Neal (“Hearing Judge”.) The Applicant was represented by counsel, Jennifer Campbell of Weiss and Schmidgall, P.C. (“Counsel,”), and no remonstrators appeared in person or by counsel. The Hearing Judge, having read the typed transcripts and documents from the Local Board hearing, the evidence and testimony submitted during the Local Board hearing, having received evidence during the appeal hearing, and having reviewed the contents of the entire Commission file, as well as having taken judicial notice of the same as well as the codes and standards adopted by the State of Indiana, now tenders proposed findings and conclusions

¹ Applicant’s permit paperwork was filed with “A-One Liquors, Inc.” as the assumed business name for application years 2003, 2004 and 2005.

² Applicant did not submit any permit applications with “3AM Liquors” or any derivation of that name as an assumed business name.

³ At some point in the operation of this permit the premises was also known as Columbia Liquors. Applicant did not submit any permit applications or other paperwork with “Columbia Liquor Market” or any derivation thereof as an assumed business name. Photos submitted as evidence at the appeal hearing do substantiate that at the time the photo was taken the permit was being operated with a sign on the façade that read “Columbia Liquors.”

of law to the Commission for its consideration.

II. Procedural History

1. Applicant applied to renew Permit in August 2010.
2. On March 3, 2011, the Local Board voted to recommend denial of Applicant's renewal application.
3. On March 15, 2011, the Commission adopted the recommendation of the Local Board and affirmed the denial of Applicant's renewal application.
4. On March 29, 2011, the Applicant, by Counsel, timely filed a request for appeal hearing.
5. On September 6, 2011 and November 9, 2011, the Applicant, by Counsel, requested and was granted continuances of the appeal hearing.
6. On January 26, 2012, the Commission held the appeal hearing. The hearing was conducted by the Hearing Judge.

III. Evidence Before the Local Board

1. Paragraphs 1 through 6 of Section II are incorporated by reference.
2. The following individuals testified before the Local Board in favor of the Applicant:
 - a. The Applicant, Larry Sears.
 - b. Applicant's Counsel, Jennifer Campbell
3. The following evidence was introduced and admitted before the Local Board in favor of the Applicant:
 - a. Petitions in favor of renewal signed by residents of Hammond, IN.
4. The following individuals testified before the Local Board on August 15, 2011, against the Applicant:
 - a. Kristina Kantar
 - b. Edwina Pleasure
 - c. Reverend Paul Bock
 - d. Carletta B.

- e. Kimberley Nordhoff
5. The following evidence was introduced and admitted before the Local Board against the Applicant:
- a. Hammond Fire Department Incident Report, dated February 20, 2011, detailing a fire at the location of the Applicant's premises.
 - b. A report of "calls for service," submitted by Kris Kantar, purportedly describing 49 police runs to the Applicant's premises from January 1, 2008 to September 9, 2009.
 - c. Photos, with no credit to the photographer, dated February 20, 2011, detailing the outside, inside customer area and inner storage areas of the Applicant's premises.
 - d. Findings and Order of the City of Hammond Board of Public Works for Applicant's premises ordering the destruction of the property under the authority of the Unsafe Building Act.

IV. Evidence Before the Commission

1. Paragraphs 1 through 5 of Section III are incorporated by reference.
2. The contents of the entire Commission file regarding the Permit ("ATC file").
3. The following individuals testified at the appeal hearing in favor of the Applicant:
 - a. Applicant by Counsel.
4. The following evidence was introduced and admitted before the Hearing Judge in favor of the Applicant:
 - a. Appeal Binder in Support of Renewal Application, which included the following documents:
 - i. Lake County Local Board Transcript: March 3, 2011;
 - ii. Offer and Acceptance of Settlement: Settlement Offer and Parties Agreed Disposition;
 - iii. Letter to the Commission: October 20, 2010, in reference to the permit violations;
 - iv. Affidavit of Bassam Odtallah relating to the violations for minor loitering and sales to a minor;

- v. Letter from Christopher Ramirez: March 1, 2010, relating to the violations for loitering, sales to a minor, and individual tobacco sales;
- vi. Jose Villanueva's Employee Permit, Visit and Evaluation proof of employee permit furnished relating to violations;
- vii. Location Maps of the permit premises at 5707 Columbia Avenue, Hammond, Indiana, 46320, one map depicting 200 foot radius other map with churches, schools, and parks highlighted;
- viii. Permit Information for R & L Sears Late-Nite Liquors, Inc., the Applicant's permit in Medaryville, Indiana;
- ix. Hammond Police Department Records for all calls of service to the permit premises from September 2002 to present, including incident reports;
- x. Charts, Graphs, and Data from City-Data.com entitled, "Crime in Hammond, Indiana (IN): murders, rapes, robberies, assaults, burglaries, thefts, auto thefts, arson, law enforcement employees, police officers."
- xi. Article from nwtimes.com entitled, "Hammond crime drops 4%."
- xii. Crime Report for Hammond, Indiana from HomeSurfer.com;
- xiii. Letter from the City of Hammond Law Department, Attorney Kristina Kantar dated November 3, 2011, stating no objection to the sale of the license and its temporary placement in escrow;
- xiv. Attorney Case Viewer for Larry Sears vs. Jose Figueroa from lakecountyin.org;
- xv. Letter from David Cerven: March 21, 2011, regarding demolition of premises;
- xvi. Contract between Soto's General Construction and Sam Odtallah regarding Property Address 5707 Columbia Avenue, Hammond, IN and repairs to the building;
- xvii. Records from the Hammond Fire Department relating to the fire at the premises of February 20, 2011;
- xviii. Affidavit of Forgery from Auto-Owners Insurance Company: September 20, 2011, relating to loss of insurance proceeds;
- xix. Auto-Owners Insurance Company Claim Payment Check: May 23, 2011;
- xx. Michaelson & Messinger Insurance Specialists, LLC document regarding claim for damage to the property;

- xxi. Fax from Ed Messinger of Michaelson & Messinger Insurance Specialists, LLC and enclosed documents to indicate loss of sales and insurance claim resulting from fire including:
 - 1. Business Income Data for Columbia Liquor Market, Inc.: July 18, 2011;
 - 2. Columbia Liquor Market, Inc. Profit/Loss Statement: January 1, 2010 – February 17, 2011;
 - 3. Quarterly Returns for the first and second quarter of 2011 for Columbia Liquor Market, Inc. from Halawa & Associates;
 - 4. State Form 250 (R9/3-11), Form UC-1: Quarter 1, 2011;
 - 5. Quarterly Payroll Report for Bassam Odtallah: Quarter 1, 2011;
 - 6. Documents from Indiana Department of Revenue: January – March 2011;
 - 7. WH-1 Breakdown of Indiana County Tax Withheld;
 - 8. Employer’s Quarterly Federal Tax Return Form 941 for 2011;
 - 9. State Form 250 (R9/3-11), Form UC-1: Quarter 2, 2011;
 - 10. Quarterly Payroll Report for Bassam Odtallah: Quarter 2, 2011;
 - 11. Documents from Indiana Department of Revenue: April – June 2011;
 - 12. WH-1 Breakdown of Indiana County Tax Withheld;
- xxii. Petition asking residents if they would like to keep “Columbia Liquor Market (formerly A-1 – 3AM Liquor) (476 signatures, 368 of which are Hammond residents).
- xxiii. Photos of the permit premises prior to its demolition.

- 5. The following individuals testified at the appeal hearing against the Applicant:
 - a. None.
- 6. The following evidence was introduced and admitted before the Hearing Judge against the Applicant:
 - a. None.

V. Findings of Fact

- 1. Paragraphs 1 through 6 of Section IV are incorporated by reference.

2. Applicant is the holder of an ATC permit type 217, #DL45-13168. *ATC file.*
3. Lawrence Sears is the president of R & L Sears Cut Rate Liquors, Inc. *ATC file.*
4. R & L Sears Cut Rate Liquors, Inc. was administratively dissolved on March 12, 2004. *ATC file.*
5. The permit premises operated with a sign on the façade that read “Columbia Liquors” on February 20, 2011. *Local Board hearing.*
6. Columbia Liquor Market, Inc. was registered as a domestic for-profit corporation with the Indiana Secretary of State’s office on January 15, 2008. The incorporator and corporate president are listed as Bassam Odtallah. The corporate address of Columbia Liquor Market, Inc. is the same as the corporate address of R & L Sears Cut Rate Liquors, Inc. *ATC file.*
7. Bassam Odtallah (“Manager”) is the manager of the Applicant’s Permit. *Local Board hearing; Appeal hearing; ATC file.*
8. Manager of Applicant’s Permit employed Christopher Ramirez and Jose Villanueva. *Local Board hearing; Appeal hearing; ATC file.*
9. The Applicant was issued a notice of permit visit and evaluation by the Indiana State Excise Police (“ISEP”.) The ISEP officer issued administrative violations for no record of employee permit; allowing a minor to loiter, and furnishing alcohol beverage to a minor/allowing a minor to loiter which occurred on February 28, 2010, and April 19, 2010. *ATC file.*
10. The Applicant entered into a settlement offer with the Commission, including the stipulation that the employee permit charge was deferred, and paid a fine of \$750.00, which was accepted as an agreed disposition by the Commission on December 21, 2010. *ATC file.*
11. At no time was the Applicant cited as a public nuisance by the ATC or cited criminally for involvement in acts which violate the penal code. *ATC file.*
12. The records of the Hammond Police Department indicate that the Applicant’s employees did have exterior surveillance of the building and did contact the police department for assistance for drive by shootings and crime in the area. *Local Board hearing; Appeal hearing.*
13. The permit premise is located in a high crime area known to be frequented by gang members. *Local Board hearing.*
14. The Applicant has submitted petitions signed by residents of Hammond and neighboring communities requesting that the permit premises, called Columbia Liquor Market, remain open. *Local Board hearing; Appeal hearing.*

15. The Applicant owns another package store and alcoholic beverage permit in Medaryville, Indiana, which has received one tobacco citation in the last twelve years. *ATC file.*
16. The Applicant has fully disclosed all facts in respect to the location of the licensed premises for which the permit renewal is applied. *Ind. Code § 7.1-3-23-13; ATC file.*
17. The City of Hammond strongly opposes Applicant holding an alcohol permit in Hammond, IN. The City states it does not oppose the transfer of ownership and transfer of location of the permit. *Appeal hearing.*
18. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

VI. 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. Applicant properly submitted an application for renewal of its Permit in accordance with Ind. Code § 7.1-3-1-4.
3. The Commission is authorized to act upon proper application. *Ind. Code § 7.1-3-1-4.*
4. The Commission is required to follow the recommendation of the Local Board when the Local Board votes to deny an application by majority vote, unless the recommendation is arbitrary, capricious, contrary to a constitutional right, outside statutory jurisdiction, without observance of required procedures, or unsupported by substantial evidence. *Ind. Code § 7.1-3-19-11.*
5. The Hearing Judge may take judicial notice of the ATC file, including the transcript of proceedings and exhibits before the Local Board. *905 Ind. Admin. Code 1-36-7(a).*
6. The Hearing Judge may consider as evidence all documents, codes, and standards that have been adopted by the State of Indiana. *905 Ind. Admin. Code 1-36-8(e).*
7. 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 ATC file. *Ind. Code § 7.1-3-19-11(a); 905 Ind. Admin. Code 1-36-7(a).*
8. A renewal application may be denied for one of the following reasons: (1) the permittee does not maintain a high and fine reputation, and is not of good moral character and good repute in the community; (2) the permittee has allowed the licensed premises to become a public nuisance, or the scene of acts or conduct which are prohibited by the criminal laws of Indiana or the United States; (3) the

permittee violates or refuses to comply with a provision or a rule or regulation of the Commission; (4) the permittee has ceased to possess any of the qualifications, including alteration or cessation of the particular business or type of business then engaged in, which qualifies him to hold that particular type of permit; or (5) the applicant has not fully disclosed the true facts in respect of the location of the permit premises for which the permit is applied. 905 *Ind. Admin. Code* 1-27-1, 2, and 3.

9. In determining a Applicant's eligibility to hold, renew, or continue to hold a permit, particularly where the applicant is of good moral character and of good repute, the Commission shall consider whether acts or conduct of the applicant or agents or employees constitutes action or conduct prohibited by the Indiana Penal Code or United States Code. 905 *Ind. Admin. Code* 1-27-1.
10. A "public nuisance" is defined as a place, building or manner of conducting business in violation of the law or a rule or regulation of the ATC. *Ind. Code* § 7.1-2-6-1 *et seq.*
11. The sanctions contemplated by 905 IAC 1-27-1 *et seq.* require the filing of an action in a court of law or the initiation of proceedings by the ATC under 905 1-37-1 *et seq.* and do not authorize the local board to determine "sua sponte" whether or not acts or conduct of a permittee constitute a public nuisance. *Ind. Code* § 7.1-2-6-4, *Ind. Code* § 7.1-2-6-5, *Ind. Code* § 7.1-2-6-7, *Ind. Code* § 7.1-2-6-8, *Ind. Code* § 7.1-2-6-10, *Ind. Code* § 7.1-2-6-11, *Ind. Code* § 7.1-2-6-12, *Ind. Code* § 7.1-2-6-13.
12. 905 *Ind. Admin. Code* § 1-27-3 recognizes the authority of the ATC to allege such misconduct, which, in turn, must be prosecuted and judicially determined, or administratively determined in proceedings under 905 *Ind. Admin. Code* 1-37-1 *et seq.*, in order to impose the "sanctions" referred to in 905 *Ind. Admin. Code* § 1-27-2; *See also*, 905 *Ind. Admin. Code* 1-37-1 *et seq.*
13. The local board shall also consider the efforts of an Applicant to abate a public nuisance, including whether the police department that serves the property was notified by the Applicant of actions alleged to constitute a public nuisance. *Ind. Alc. Bev. Comm'n. v. River Rd. Lounge*, 590 N.E.2d 656 (1992); *Ind. Code* § 7.1-2-6-1(c).
14. Substantial evidence is the standard to be applied by the Commission in review of the record of proceedings. Substantial evidence requires something more than a scintilla, and less than a preponderance of evidence; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Ind. Alc. Bev. Comm'n. v. River Road Lounge*, 590 N.E. 2d at 659; *see also Roberts v. County of Allen*, 773 N.E.2d 850, 853 (Ind. App. 2002). Substantial evidence is more than speculation or conjecture. *Id.*
15. The function of a local board is that of a recommending body. The Commission itself is the ultimate decision maker; it is required to follow the recommendation of the local board only when a majority of the members of the local board vote to deny the

application for a permit. In all other instances, the Commission can act with or without the approval of the local board. *Ind. Alc. Bev. Comm'n. v. State*, 269 Ind. 48, 58 (Ind. 1978).

16. Substantial evidence, given the totality of the record and proceedings, must form the basis for the Commission's decision. *Ind. Alc. Bev. Comm'n. v. River Road Lounge*, 590 N.E. 2d at 659.
17. The initial findings of the Local Board were unsupported by substantial evidence. *Ind. Code* § 7.1-3-19-11
18. The Commission, at its discretion, however, may allow the Applicant to place the denied Permit into escrow and allow a reasonable time for the Applicant to sell the Permit to a bona fide purchaser for value in an arms length transaction subject to the approval of the Commission. 905 *Ind. Admin. Code* 1-36-2(c).

Therefore, it is ORDERED, ADJUDGED AND DECREED that the recommendation of the Local Board to deny this renewal application shall be REVERSED.

It is, however, further ORDERED, ADJUDGED AND DECREED that the Permit shall be RENEWED and placed in ESCROW for the exclusive and limited purpose to allow for the TRANSFER OF OWNERSHIP of the Permit to a bona fide purchaser for value in an arms length transaction subject to the approval of the Commission.

It is, further, ORDERED, ADJUDGED AND DECREED that the Permit shall remain in ESCROW for a period of one year from the date of approval of these findings. The Applicant shall provide a written progress report on a date six months from the date of approval of these findings. The ESCROW period shall not extend beyond one year without the written consent of the Commission.

It is, finally, ORDERED, ADJUDGED and DECREED that the appeal of the Applicant is GRANTED, and the renewal of permit is hereby GRANTED for the purposes stated above.

Dated: March 12, 2012



N. Davey Neal
Hearing Judge