

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
MIDWAY BEVERAGES, LLC)	PERMIT NO. RR4535644/
13106 WICKER AVE.)	RR4535645
CEDAR LAKE, IN 46303)	
)	
Permittee.)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Midway Beverages, LLC, 13106 Wicker Ave., Cedar Lake, Indiana 46303 (Applicant), permit number RR45-35644 and RR45-35645 (Permit), is the applicant for a beer, wine, and liquor retail permit in a small city or town, commonly referred to as a 210-1. Permit was applied for July 10, 2019, approved by the Local Board of Lake County on September 4, 2019, and conditionally approved by the Alcohol and Tobacco Commission (Commission) on September 17, 2019. Conditional approval was dependent on either making the permit active or satisfying the requirements to deposit the permit in non-operational escrow status.

Judicial notice is taken of the entire Commission file for permit number RR45-35644 and RR45-35645.

II. FINDINGS OF FACT

1. Applicant is the applicant for a type 210-1 and underlying permit. (ATC File.)
2. Permit was conditionally approved by the Commission on September 17, 2019 conditioned on either making the permit active or complying with the escrow requirements in IC 7.1-3-1.1. (Commission meeting, September 17, 2019.)

3. Permit was set for escrow hearing on October 8, 2019 and notice of the hearing was sent to Applicant at the address on record with the Commission. (ATC File.)

4. Applicant failed to appear at the escrow hearing on October 8, 2019. (ATC File, Escrow hearing October 8, 2019.)

5. Escrow hearing was continued to November 13, 2019 and notice of the hearing was sent to the Applicant at the address on record with the Commission. (ATC File.)

6. Applicant again failed to appear at the escrow hearing on November 13, 2019 and the Commission denied escrow. (ATC File, Escrow hearing November 13, 2019.)

7. Commission set Permit for the December 3, 2019 Commission meeting to consider whether Applicant qualified to hold Permit.

8. At the December 3, 2019 Commission meeting, the Commission determined that the Applicant did not qualify to hold permit because:

- i. Applicant failed to comply with orders of the Commission;
- ii. Applicant failed to appear for escrow hearing on October 8, 2019 as required by IC 7.1-3-1.1;
- iii. Applicant failed to appear for escrow hearing on November 13, 2019 as required by IC 7.1-3-1.1; and
- iv. Permit was not made active.

9. Applicant timely appealed the denial of Permit and the matter was set for appeal hearing on February 19, 2020.

10. Applicant did receive the orders of the Commission setting the Permit for escrow hearings but chose not to attend because he was occupied with other aspects of the business. (ATC hearing.)

11. Applicant would have been ready for final inspection at the time the Permit was conditionally approved but was waiting for the patio area to be completed so all floor plan approvals would be done at one time. (ATC Hearing.)

12. Applicant will seek floor plan approval immediately if the denial is reversed. (ATC Hearing.)

13. 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 § 7.1-2-3-4.

2. A permittee shall have no property right in a retailer's or dealer's permit of any type. Ind. Code § 7.1-3-1-2.

3. Ind. Code § 7.1-2-3-4 grants the Commission the power to hold permits on deposit as authorized by Ind. Code § 7.1-3-1.1.

4. Ind. Code § 7.1-3-1.1-4(2) requires an Applicant to appear at a public meeting before the Commission if the permit is not ready to be operational.

5. Applicant failed to comply with Ind. Code § 7.1-3-1.1-4(2) and escrow was appropriately denied by the Commission.

6. Applicant failed to comply with the Commission's orders to appear for hearings. (ATC File.)

7. The Commission's order was an order to comply with a provision of Title 7.1, specifically Ind. Code § 7.1-3-1.1-4(2).

8. The Commission may revoke a permit on account of the refusal to comply with a provision of Title 7.1. Ind. Code § 7.1-3-23-5.

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

IV. RECOMMENDATION

Although Applicant failed to appear for two escrow hearing as required by IC 7.1-3-1.1-4(2) and intentionally failed to comply with multiple orders of the Commission, Applicant is ready for final inspection and could have been ready in September 2019. In the interest of keeping permits active and operational, Hearing Judge recommends reversing the denial of Permit and ordering the Applicant to get final inspection completed within thirty (30) days of the Commission's adoption of this recommendation. Additionally, Hearing Judge recommends putting Applicant on strict compliance with:

- a. Title 7.1 of the Indiana Code;
- b. Title 905 of the Indiana Administrative Code; and
- c. All orders of the Commission.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that permit number RR45-35644/RR45-35645 should be GRANTED and the Applicant shall obtain final inspection and floor plan approval within 30 days of the date of this order. Finally, it is ordered that Applicant shall strictly comply with Title 7.1 of the Indiana Code, Title 905 of the Indiana Administrative Code, and all future orders of the Commission.

DATE: February 24, 2020.

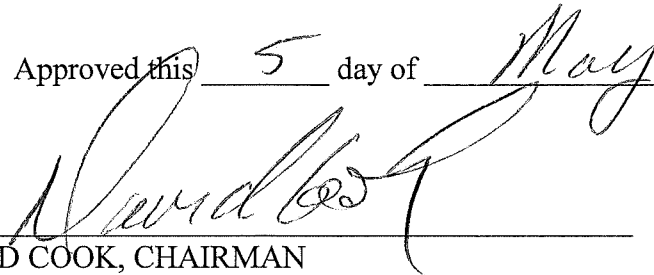


Jessica Allen, Hearing Officer

Distribution:

Midway Beverages, LLC
PO Box 2009
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Approved this 5 day of May, 2020.



DAVID COOK, CHAIRMAN



JOHN KRAUSS, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER