

ALCOHOL AND TOBACCO COMMISSION

October 6, 2015

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes

September 15, 2015

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

5. Consideration of Applications -

998 Renewals

46 New/Transfers

19 Catering

5 1st Year Escrow

4 2nd Year Escrow

2 3rd Year Escrow

2 4th Year Escrow

19 New/Renewal Carriers

19 New/Renewal Direct Shippers

6. Renewal Letters and Waiver of Fees for Letters of Extension -

7. Applications for Discussion –

RR64-31493 Pavilion Partners, LLC – New application with the LB voting 3-1 to deny

RR42-30455 Fox Ridge Partners, LLC – Renewal with the LB voting 2-1 to approve

RR25-01239 Putman Family, LLC – Renewal with the LB voting 2-2.

RR34-30504 Laugh House, LLC – Renewal with the LB voting 4-0 to deny

RR34-31575 Factory 765, LLC – New application with the LB voting 4-0 to deny

RR20-22666 3L's Incorporated – Renewal with the LB voting 3-0 to deny

8. Inactive Files –

11 Permits Not Subject to Auction

9. Old Business -

10. New Business -

Revocation of Employee Permits

Daniel T. Claypool – 2 convictions

Tamera L. Penn – 2 convictions

MINUTES

ALCOHOL AND TOBACCO COMMISSION

OCTOBER 6, 2015

CALL TO ORDER/NOTING OF QUORUM

Chairman Cook called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Coleman, Commissioner Grubb and Commissioner Maginn. Executive Secretary Rothenberg, Commission Counsel Allen, Prosecutor Mader, Master Officer Bedwell and Superintendent Strittmatter were also in attendance.

Katie Maddox, Matt Brase, Jenny Drewry, Norman Hellmers, Patricia Hellmers, Jacob German, Bonnie Lewis, Melissa Coxey, Mark Webb, Marc Carmichael, Brooke Litherland, Kendal Tusey and Diane Masariu were present as observers.

DISPOSITION OF MINUTES

Vice Chairman Coleman moved to approve the minutes from the September 15, 2015 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the 45 Parties' Agreed Dispositions that were submitted, totaling approximately \$16,575.00 in fines.

Commissioner Maginn moved to approve the Dispositions that were submitted for the October 6, 2015 meeting. Vice Chairman Coleman seconded. The motion was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

No Hearing Judge's Recommendations

CONSIDERATION OF APPLICATIONS

Commissioner Grubb moved to approve and incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by our staff with the authority of the commission and hereby move for approval of same and the inclusion of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of permit applications for a new permit, or applications for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two commissioners and hereby move for approval of same, pending final floor plan approval by the Indiana State Excise Police, and inclusion of these lists as part of the minutes. Commission Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of applications for catering. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years, which have been reviewed and recommended by a commissioner as appropriate for escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the new and renewal carrier permits. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the new and renewal direct wine shipper permits. Commissioner Maginn seconded. The motion was unanimously approved.

Nine hundred ninety-eight (998) renewals approved, forty-six (46) new and/or transfer applications approved, nineteen (19) permits approved for catering, five (5) permits approved for first year escrow, four (4) permits approved for second year escrow, two (2) permit approved for third year escrow, two (2) permit approved for fourth year escrow, four (4) new carrier permits approved, fifteen (15) renewal carrier permits approved, ten (10) direct wine shipper renewal permits approved and nine (9) new direct wine shipper permits approved.

RENEWAL LETTERS AND WAIVER OF FEES

Vice Chairman Coleman moved to approve the renewal and fee waived letters of extension for the preceding weeks. Commissioner Maginn seconded. The motion was unanimously approved.

APPLICATIONS FOR DISCUSSION

RR64-31493 PAVILION PARTNERS, LLC – See transcript for discussion. The new permit was denied 4-0.

RR42-30455 FOX RIDGE PARTNERS, LLC – Commission Counsel Allen noted this is a renewal with the local board voting 2-1 to approve.

Counsel Allen stated the business was being operated as a nightclub and not a restaurant, which is how the location is zoned. Remonstrators complained about the noise. The owner stated this permit will be placed into escrow, while searching for a purchaser for the building who will operate a restaurant.

Commissioner Maginn moved to uphold the local board's recommendation and approve the renewal. Vice Chairman Coleman seconded. The motion was unanimously approved.

RR25-01239 PUTMAN FAMILY, LLC – Commission Counsel Allen stated this was a renewal with the local board voting 2-2.

Counsel Allen noted this was continued from the last meeting because the owner was on trial for felonies that would prohibit him from holding this permit. The court's decision was received and while the owner was convicted of a class D felony, this would not automatically prohibit ownership of the permit.

Commissioner Grubb moved to remand this renewal to the local board for further review regarding conviction of the owner. Commissioner Maginn seconded. The motion was unanimously approved.

RR34-30504 LAUGH HOUSE, LLC – Commission Counsel Allen noted this is a renewal with the local board voting 4-0 to deny.

Counsel Allen stated the owner no longer wanted the business and thought it was closed. However, renewals were filed and signed by another party, Erica Washington, who has no ownership in the business and no Consent to Transfer on file.

Vice Chairman Coleman moved to uphold the local board and deny the renewal. Commissioner Maginn seconded. The motion was unanimously approved.

RR34-31575 FACTORY 765, LLC – Commission Counsel Allen noted this is a new application with the local board voting 4-0 to deny.

Counsel Allen stated this application was filed by Erica Washington for a new permit in the same location as the above-referenced permit. The local board asked for names of managers and Manager's Questionnaires for the people who were going to be involved with the business. None of that information was provided to the local board.

Commissioner Maginn moved to uphold the local board's recommendation and deny the new permit. Vice Chairman Coleman seconded. The motion was unanimously approved.

RR22-22666 3 L'S INCORPORATED - Commission Counsel Allen noted this is a renewal with the local board voting 3-0 to deny.

Counsel Allen stated this permittee had three failed SAC checks in the last four years. The last one occurred when unlicensed, high school students were taking orders and payment for alcohol.

Vice Chairman Coleman moved to uphold the local board's recommendation and deny the renewal. Commissioner Maginn seconded. The motion was unanimously approved.

INACTIVE FILES

Commissioner Grubb moved to make eleven (11) permits inactive. All eleven permits are not subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

OLD BUSINESS

No Old Business

NEW BUSINESS

REVOCATION OF EMPLOYEE PERMITS - Commissioner Grubb moved to revoke the following employee permits that do not fall under IC 7.1-3-18-9.5. Commissioner Maginn seconded. The motion was unanimously approved.

Daniel T. Claypool, BR1757745; Tamera L. Penn, BR1709581; Dawn M. Frazier, BR1756196; Joseph A. Pasquali, BR1798462

READOPTION OF RULES – Executive Secretary Rothenberg stated Legislative Services notified him that 905 IAC 1-12.5, 905 IAC 1-39, 905 IAC 1-40, 905 IAC 1-41, 905 IAC 1-43.1 and 905 IAC 1-45 are set to expire at the end of 2015.

Vice Chairman Coleman moved to readopt the rules that are set to expire. Commissioner Maginn seconded. The motion was unanimously approved.

SERVER TRAINING PROGRAM APPROVAL – Master Officer Heather Lynch recommended two new server training programs be approved. The first one is Diversystlearning.com and the second one is Skillsoft.com. She also asked that these programs be given the right to change their domain names at a later date so it is more specific to Indiana.

Commissioner Maginn moved to approve the new programs. Vice Chairman Coleman seconded. The motion was unanimously approved.

POLICY DETERMINATIONS

No Policy Determinations

ANNOUNCEMENTS

Commissioner Grubb stated he sat in on the Indiana State Excise Police promotion board interviews. He wanted to commend them and asked Superintendent Strittmatter to convey to the board that the level of professionalism and integrity was very impressive during this process.

ADJOURNMENT

Vice Chairman Coleman moved to adjourn the meeting. Commissioner Maginn seconded. The motion was unanimously approved.

Approved this 20th day of October, 2015.



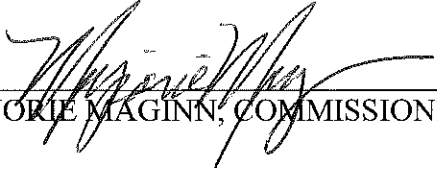
DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER

1 Chairman Cook RR64-31493 Pavilion Partners, LLC. New application with the local
2 board voting 3-1 to deny. I'm going to open the discussion...well, first
3 of all, I just want to before we even begin on this, I want to make some
4 opening remarks. There was a concern that we had when we received
5 the initial recording from the second local board hearing and we
6 weren't able to hear an awful lot of the audio. I want to give public
7 thanks to a person I don't know the name of who came forward with a
8 video and made it available to us. That video was of sufficient clarity
9 that the commission was able to hear everything that was said at that
10 local board. I don't know that person's name. Someday, somebody
11 will, I assume, tell me who that person is and I will be able to thank
12 them publically. We certainly appreciate that. That video, along with
13 its audio was made available to the full commission and to the applicant
14 by virtue of their trial attorney. I also want to make a comment that
15 recording, from time to time, picked up side comments from persons in
16 the audience who apparently were seated close to the photographer.
17 Those comments, many of which were inaudible, some which were not,
18 were not considered in any way by the commission in drawing its
19 conclusions and findings. I just did want to make that comment. Also,
20 since the second hearing, there's continuing to be submissions of
21 evidence, letters, emails from parties for and against the application---
22 post second hearing. In that those emails and letters were not presented
23 to the local board, were not part of the local board review and were all
24 submitted post-hearing, we took that into consideration in reviewing the

25 local board's decision making process; however, this is a de novo
26 review. I've separated those documents out as being post-hearing so
27 that at least whoever reviews this decision making process later on can
28 look at those and see that they were post-hearing. They will be made
29 part of the record at the appropriate time. There was an exhibit that was
30 submitted to the...proposed findings of fact and conclusions of law that
31 was submitted by the applicant, which contained 432 additional
32 signatures, which were not presented to the local board that were in
33 favor of this application. I would indicate that my review showed that
34 63% of those were from out-of-state residents. I have a question and a
35 concern about standing, granting standing to Illinois residents or other
36 out-of-state residents regarding Indiana issues. Having said all of that,
37 those will be made a part of the record. I'm going to open this up for
38 discussion. I'd like to begin. What I want to indicate here is that what
39 follows is an explanation of my individual vote at that particular point
40 and time when we get to that point and time. Each of the
41 commissioners has reviewed the local board's findings and has come to
42 their individual conclusion. They may or may not agree with some or
43 all of the points that I am making here. An issue central to the
44 resolution of the issues in this case is the definition of the term
45 "community". This is a case of first impression as it relates to the
46 application of Title 7.1, relating to the definition of community. I
47 looked at the general definition of community that being generally the
48 same area, subject to the same government with the same interests and

49 concerns, sharing common location, sharing common concerns. There
50 is no clear definition of that term in Title 7.1. I looked, therefore, to
51 other statutory language in Title 7.1, dealing with “community” and/or
52 “neighborhood”. In doing so, it became apparent that Title 7.1, when
53 discussing such issues, gives great weight to those in close proximity to
54 a permit location than those further away---see section IC 7.1-2-4-22(b)
55 and even rises to the level of exclusion of certain persons recognized to
56 be outside of statutory limits---referring to 7.1-1-3-38. Having said
57 that, in considering issues with a state park, it seems reasonable to
58 include and grant due process standing to the citizens of the State of
59 Indiana. Pursuant to Title 7.1, it is also reasonable to give greater
60 weight to those persons residing in close proximity to the proposed
61 permit location because they are the ones who, on a daily basis, must
62 live with the impact, positive or negative, of the permit being issued. I
63 believe, therefore, it is evident why Indiana statutes created local
64 boards, so as to enable local communities and neighborhoods to be able
65 to weigh in on alcohol issues in their area. Further, 905 IAC 1-27-4,
66 uses the term “neighborhood or community”, giving further support to
67 giving greater weight to the issues and concerns of those in close
68 proximity to the permit location. Also of great importance in this issue
69 is the need for and the desire for the services in the neighborhood or
70 community. I believe the applicant has made a valid case that in order
71 to make the business proposition viable, he will need alcohol to be
72 served at the permit location. That does not necessarily translate to a

73 need for the services in the neighborhood or community. Traditionally,
74 the need for services is proven by facts showing a particular area is
75 underrepresented by businesses that serve alcohol, in relation to
76 population. For instance, a consumer must drive unreasonable
77 distances in order to obtain alcohol or that a particular area is
78 underrepresented in package liquor stores causing undue inconvenience
79 relating to alcohol purchases. Therefore, while the fact that the
80 applicant's business proposal is likely not to succeed without an alcohol
81 permit, would be considered evidence of need for the applicant; it does
82 not necessarily translate to need for the services by the community or
83 the neighborhood, an analysis continued to the desire for the services in
84 the neighborhood or community. Applicant asserts that the desire for
85 the services is evidenced by the fact that some are willing to use the
86 services, if available, and/or by the fact that other alcohol permits have
87 been issued in the neighborhood or community. To my way of
88 thinking, this reasoning misses the point in that the analysis of 905 IAC
89 1-27-4, is tied to the location in question. I do not believe that a
90 showing that other permits in the area, or that someone would be
91 willing to buy alcohol at the proposed location equates to the desire for
92 the services at the proposed location. In the instant case there has been
93 a 2-1 remonstrance against this permit at the proposed location
94 certainly, arguably, there is no desire in the community or
95 neighborhood for the service. Finally, this commission is charged with
96 regulating alcohol, keeping in mind the economic welfare, health, safety

97 and morals of the Indiana community. I don't believe it is the place of
98 this commission to comment or decide whether this is a good or a bad
99 decision, rather it's the charge of the commission to review the local
100 board decision, under the criteria set out in Indiana Code 7.1-3-19-
101 11(a)(1-4). With that, I'll open to other comments, or questions, or
102 whatever by the commission.

103 Vice Chairman Coleman Are you ready for a motion?

104 Cook Does anybody have any other comments?

105 Commissioner Maginn I had some technical questions, mostly related to the application, and I
106 just wanted to thank the local board for the work that they did on
107 scheduling this at a time and place that was convenient for everybody to
108 be there. And, also, in reviewing the application and addressing the
109 questions that I have, I received answers on all of those. Just want to
110 thank them for the work that they did---really went out of their way to
111 make sure it was a full, public hearing with involvement by everybody
112 who attended.

113 Cook Any other comments?

114 Commissioner Grubb Mr. Chairman, it's a...I made a lot of decisions in my career and many
115 of them are not all black and white. I think this one is similar. I find
116 merit to both sides of the equation. I understand citizens who are totally
117 opposed to alcohol in their community and past history of problems.
118 I'm also, as a Hoosier, like to see our state parks and our historic
119 buildings maintained and kept up. In recognizing our current economic
120 environment that we've operated in for several years, unless a private

121 developer comes in and takes hold of something with their money and
122 their investment, I don't know how we maintain some of these
123 buildings. So, I guess, regardless of what happens here with the vote
124 this morning, perhaps people could continue to try to work together to
125 find a solution that would benefit everyone.

126 Cook I agree. I think everybody has an interest in seeing that building
127 renovated. If it's all possible for that to be done, I think the community
128 would benefit, the whole entire community would benefit from that.
129 Any other discussions?

130 Coleman I think it's the State's duty to keep that building in tip top shape and
131 they just haven't done it. It should be the tax payers sharing equally in
132 that burden.

133 Cook Any other comments. Okay. Anybody wish to make a motion?

134 Coleman Mr. Chairman, I move that we uphold the local board vote of 3-1 to
135 deny the application of Pavilion Partners, LLC. I have reviewed the
136 requirements of Indiana Code 7.1-3-19-11. I don't think their decision
137 was arbitrary or capricious, an abuse of discretion, or otherwise not in
138 accordance with the law. It was not contrary to a constitutional right,
139 power, privilege or immunity. It was not in excess of, or contrary to
140 statutory jurisdiction, authority, or limitation of rights. And, it was not
141 without observance of procedure required by law, or it was unsupported
142 by substantial evidence. So, there's no exception. I think it's our duty
143 to follow the local board's vote.

144 Maginn Second.

145 Cook

All right. It's been moved and seconded that the Alcohol and Tobacco Commission uphold the local board's 3-1 denial of the permit. Is there any further discussion? I'm going to do this role call. I'm going to begin. I feel it necessary to make a record on this. It's been a hotly contested, emotionally charged issue. A lot of resources have been sent on this. I concur with Judge Coleman's remarks. "Arbitrary" is defined as an action that is not planned or chosen for any reason, or not based on reason or evidence or done without concern for what is right or fair. I have fully reviewed the record of the original and most recent local board hearings. I do not find evidence that would support the contention that the local board's decision is arbitrary. "Capricious" is defined as changing often and quickly, not based on logic or reasonableness. I do not find evidence that would support the contention that the local board's findings were capricious. "Abuse of discretion" is defined as a failure to take into proper consideration the facts and the law in deciding a question relating to a particular matter, or an arbitrary departure from established precedent. I do not find the local board's decision fits that definition of abuse of discretion. The local board heard in depth testimony from both sides relating to the issues raised by the permit application. While we may or may not individually agree with the board's findings, we are charged with the responsibility to apply the review criteria set out by 7.1-3-19-11. I find no abuse of discretion. After a review of the local board hearing on both sides, I find no evidence that the local board's findings are not in

169 accordance with the criteria that is set out for them at these hearings.
170 The local board seems to have considered the relevant factors of desire
171 for the service within the community, need for the service in the
172 community and the negative impact that granting the permit would
173 cause, if any, and heard significant evidence in support. I cannot say
174 that their decision was not in accordance with the law and within the
175 purview of the authority granted by IC 7.1. I do not find there was
176 any... local board's decision was contrary to constitutional right,
177 power, privilege or immunity. I do not find that their decision was in
178 excess of, or contrary to statutory jurisdiction, authority, limitations or
179 rights. I can find no evidence to support that their action was without
180 observance of procedure required by law. In fact, the very purpose of
181 the remand by the state commission was to ensure all sides of the issue
182 were properly heard in a public forum. The local board hearing lasted
183 over four hours and was conducted in accordance with accepted
184 procedure for such public meetings. Both sides were given ample
185 notice and the opportunity to state their position. I find the basic
186 elements of due process of law, that being notice and opportunity to be
187 heard were more than adequately satisfied. Finally, the local board's
188 findings were supported by substantial evidence. The local board heard
189 significant evidence on both sides of this project. They heard from
190 persons who supported this project, including local businesses and
191 tourism groups that believed it would enhance the state park, the local
192 community and assist DNR to rehabilitate a deteriorating structure. On

193 the other hand, considerable evidence was presented as to the
194 community's lack of desire for the project, the treacherous nature of
195 Lake Michigan, the uniqueness of Dunes and negative environmental
196 impact, the negative business impact in the local community that could
197 happen as a result of the added facility and the burden of the local
198 businesses created by tax advantages to the applicant that are not shared
199 by other similarly situated retailers in the local community. The local
200 board took into consideration that there was and actually found that
201 there was no evidence to support allegations that had been made against
202 the applicant that he did not have the requisite high and fine reputation
203 as required by statute. They took into evidence a petition against with
204 over 1100 signatures, noted 700 emails against, 360 letters against.
205 Postcards were submitted for, in the amount of 500, emails in the
206 amount of 15. So, given the above, I can't find evidence to support the
207 contention the decision of the local board was not supported by
208 substantial evidence. Therefore, I vote to uphold the local board's
209 application. Judge Coleman?

210 Coleman I vote, "aye", in favor of the motion.

211 Maginn I vote, "aye".

212 Grubb Yes.

213 Cook So, it's now been voted 4-0 to uphold the local board's denial of the
214 permit to Pavilion Partners, LLC. The appeal process is available to the
215 applicant with filing the local notice. I see their attorney is here today.

216

She is well aware of the timeframes that need to be to submit that

217

appeal.