

ALCOHOL AND TOBACCO COMMISSION

December 16, 2015

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes

December 1, 2015

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

RR49-12232 Agualinda, Inc. – Proposed Findings of Fact and Conclusions of Law

5. Consideration of Applications -

868 Renewals

160 New/Transfers

5 Catering

8 1<sup>st</sup> Year Escrow

12 2<sup>nd</sup> Year Escrow

2 3<sup>rd</sup> Year Escrow

4 4<sup>th</sup> Year Escrow

2 5<sup>th</sup> Year Escrow

10 New/Renewal Carrier Permits

7 New/Renewal Direct Wine Shippers

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

7. Applications for Discussion –

DL45-30290 Lincoln Highway Liquors, Inc. – Renewal and transfer with LB voting 2-1 to approve

RR71-30851 Juan Botello Morales – Renewal with LB voting 3-1 to approve

DL49-30484 Affordable RX Health Mart & Home Medical Equipment LLC – New application with LB voting 4-0 to deny. Applicant did not show at LB 5 times.

RR49-03297 Flor, Inc. – Renewal with LB voting 2-2

CH49-29961 Huff's Treehouse, LLC – New application with LB voting 4-0 to deny. Applicant did not show after several continuances.

RR20-30360 Jars, Inc. – Requesting conversion from a type 209 to a type 210

8. Inactive Files –

3 Permits Subject to Auction

14 Permits Not Subject to Auction

## MINUTES

### ALCOHOL AND TOBACCO COMMISSION

DECEMBER 16, 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, and Superintendent Strittmatter were also in attendance.

Jill Ritchie, Matt Norris, David McIntyre, Katie Maddox, Patrick Tamm, Alex Intermill, Jeff McKean, Diane Masariu, Greg Genrich, Bart Herriman, Mike Maxwell, Schuyler Culver, and Anthony Mitson were present as observers.

#### DISPOSITION OF MINUTES

Vice Chairman Coleman moved to approve the minutes from the December 1, 2015 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

#### PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the 181 Parties' Agreed Dispositions that were submitted, totaling approximately \$55,875.00 in fines.

Commissioner Maginn moved to approve the Dispositions that were submitted for the December 16, 2015 meeting. Vice Chairman Coleman seconded. The motion was unanimously approved.

#### HEARING JUDGE'S RECOMMENDATIONS

RR49-12232 AGUALINDA, INC. – Hearing Judge Rothenberg stated the local board recommended the renewal be denied. The Commission upheld the denial. The permittee filed an appeal and the matter was set for hearing. The Hearing Judge now submits his Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission.

Vice Chairman Coleman moved to uphold the recommendation of the Hearing Judge to overturn the denial and approve the renewal. Commissioner Maginn seconded. The motion was unanimously approved.

#### 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. Commissioner 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.

Eight hundred sixty-eight (868) renewals approved, one hundred sixty (160) new and/or transfer applications approved, five (5) permits approved for catering, eight (8) permits approved for first year escrow, twelve (12) permits approved for second year escrow, two (2) permits approved for third year escrow, four (4) permits approved for fourth year escrow, two (2) permits approved for fifth year escrow, ten (10) new and renewal carrier permits approved, and seven (7) new and renewal 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**

DL45-30290 LINCOLN HIGHWAY LIQUORS, INC. – Chairman Cook noted this is a renewal and transfer with the local board voting 2-1 to approve. This was continued from the last meeting.

See attached statement signed by the Commission.

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

RR71-30851 JUAN BOTELLO MORALES – Chairman Cook noted this is a renewal with the local board voting 3-1 to approve for one year.

Vice Chairman Coleman moved to uphold the recommendation of the local board to approve the renewal for one year. Commissioner Maginn seconded. The motion was unanimously approved.

DL49-30484 AFFORDABLE RX HEALTH MART & HOME MEDICAL EQUIPMENT LLC – Chairman Cook stated this is a new application with the local board voting 4-0 to deny. The applicant did not appear at the local board meeting. This matter was continued five times.

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

RR49-03297 FLOR, INC. –Chairman Cook noted this is a renewal with the local board voting 2-2.

Vice Chairman Coleman moved to approve the renewal for one year. Commissioner Maginn seconded. The motion was unanimously approved; however, Commissioner Grubb stated he reluctantly votes to approve because of their violation history.

CH49-29961 HUFF'S TREEHOUSE, LLC – Chairman Cook noted this is a new application with the local board voting 4-0 to disapprove. The applicant did not appear at the local board meeting. The matter was continued several times.

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

RR20-30360 JARS, INC. – Commissioner Counsel Allen stated the Commission received a request to convert this type 209 permit to a type 210 permit because the location has been annexed into the city limits. She recommended the Commission approve this request.

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

### **INACTIVE FILES**

Commissioner Grubb moved to make 17 permits inactive. Three permits are subject to auction and 17 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, pursuant to IC 7.1-3-18-9.5, to order the following employee permit holders to complete an alcohol evaluation and treatment program within the next six months and provide proof of same to the Commission. The Commissioner further moved that these revocations be rescheduled for the June 3, 2016 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

Alaina Hembree, BR1744529; Telma Alfaro, BR1773971

Commissioner Grubb moved to revoke the following employee permit that does not fall under IC 7.1-3-18-9.5. Commissioner Maginn seconded. The motion was unanimously approved.

Juan Hyde, Jr., BR1810367

**POLICY DETERMINATIONS**

No Policy Determinations

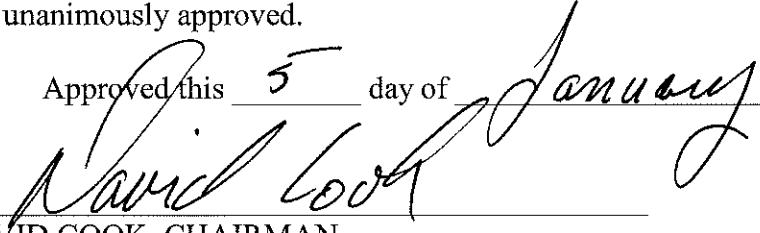
**ANNOUNCEMENTS**

No Announcements

**ADJOURNMENT**

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

Approved this 5 day of January, 2016.



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DAVID COOK, CHAIRMAN



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DAVID COLEMAN, VICE CHAIRMAN



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DALE GRUBB, COMMISSIONER



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

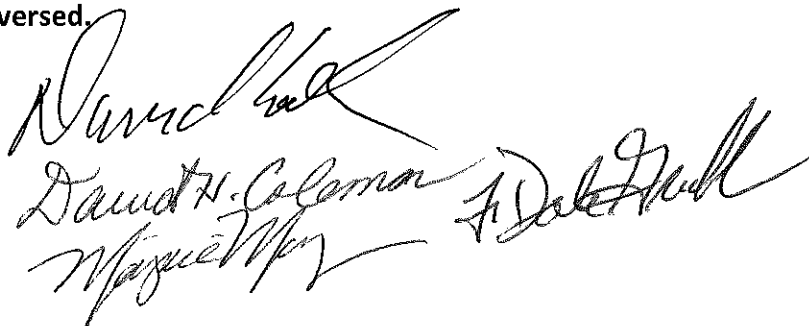
Lincoln Highway Liquors

DL45-30290

This matter comes to the board off a 2-1 LB approval of transfer of location. After three continuances to gather additional information relating to the business arrangement, a full review of the LB hearing and of all documents submitted both for and against the application for transfer of location. The Commission notes the following;

Many issues have been raised from this application including residency statutes and whether, in fact, control is component of the residency law, circumvention of quota requirements, doing indirectly that which one is prevented from doing directly, the leasing of permits and the Commission's statutory authority to renew or not renew or grant applications as it deems will best serve the public interest to name a few. The Commission wishes to be clear that while such topics were discussed in passing and certainly may be relevant in future reviews of this or similar applications the reasons for the denial are as follows;

1. Lack of leasehold interest in violation of 7.1-3-4-2. Excise investigative reports and the testimony thru interviews with the interested parties demonstrate that the lease of the permit location to be transferred to is held by Drew Pearson, Inc and Gold Standard Enterprises not Lincoln Highway Liquors. The lease is actually signed by Michael Binstein on behalf of Drew Pearson, Inc and Gold Standard Enterprises. While one of the owners of Lincoln Highway Liquors is part owner of a corporation that has some ownership interest in the permit location, the applicant, Lincoln Highway Liquors, Inc has no ownership interest or leasehold interest in the permit location. Title 7. 1 directs that the commission may not approve the application unless the applicant has an ownership or leasehold interest in the permit location during the life of the permit. For that reason the LB approval was not based on the law and should be reversed.
2. Unlisted Option to Purchase – The investigative report revealed that LHL failed to list Drew Pearson, Inc on the application to transfer location in the “disclosure of interested parties” section even though Drew Pearson has an option to purchase the permit from LHL. This beneficial interest was not disclosed on the location to transfer application or at the local board hearing. This failure to disclose is in violation of Ind. Code 7.1-3-21-8 and Ind. Code 7.1-3-23-20. And mandates denial of the application. For this reason the decision of the LB approving this transfer was not based on the law and should be reversed.

  
David H. Coleman  
Maxine M...  
J. Dale Hill