

ALCOHOL AND TOBACCO COMMISSION

April 2, 2019

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes –

March 19, 2019

3. Prosecutor's Recommendations –

PAD Forms

6 Month Letters (Employee permits)

4. Hearing Judge's Recommendations –

Applicant #3174790 Michael Thomas Shanks – Findings of Fact and Conclusions of Law

Applicant #3171433 Olivia Anne Szalaiy – Findings of Fact and Conclusions of Law

BR1727653 Amber Graham – Findings of Fact and Conclusions of Law

BR1819200 Sydney Breazeale – Findings of Fact and Conclusions of Law

TC13559001 Boomzies – Findings of Fact and Conclusions of Law

RR79-29537 TD Entertainment, LLC – Findings of Fact and Conclusions of Law

RR49-22718 Flor, Inc. – Findings of Fact and Conclusions of Law

DL82-02977 William B Shephard – Findings of Fact and Conclusions of Law

5. Consideration of Applications -

333 renewals

13 new/renewals

6 catering

8 1<sup>st</sup> year escrow

21 2<sup>nd</sup> year escrow

5 3<sup>rd</sup> year escrow

5 4<sup>th</sup> year escrow

2 5<sup>th</sup> year escrow

16 new/renewal carriers

70 new/renewal direct wine shippers

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

7. Applications for Discussion –

RR65-30996 Festers Sports Bar & Grille – Modify revocation order to denial of renewal

8. Inactive Files –

9. Old Business -

10. New Business –

11. Policy Determinations –

12. Announcements -

Round Table Dates: convenience stores 4/16; wholesalers 5/21; vintners 6/18; retailers 7/16;  
non-package store dealers 8/20; artisan distilleries 9/17

13. Adjournment

MINUTES

ALCOHOL AND TOBACCO COMMISSION

APRIL 2, 2019

**CALL TO ORDER/NOTING OF QUORUM**

Chairman Cook called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Krauss and Commissioner Grubb. Executive Secretary Allen, Commission Counsel Hyer, Industry Liaison Stewart and Prosecutor Harrison were also in attendance.

Brooke Burtnett, Greg Genrich, Jenny Drewry, Dyna Martinez, Mark Webb, Sarah Quinn, Carmen Pratts Porter, Davey Neal and David Rothenberg were present as observers.

**DISPOSITION OF MINUTES**

Vice Chairman Krauss moved to approve the minutes from the March 19, 2019 meeting. Commissioner Grubb seconded. The motion was unanimously approved.

**PROSECUTOR'S RECOMMENDATIONS**

PARTIES' AGREED DISPOSITIONS – Prosecutor Harrison submitted 68 Parties' Agreed Dispositions, totaling \$25,700.00 in fines, for the Commission's approval.

The Prosecutor highlighted a few of the dispositions: RR82-02985, floor plan violation (had been warned several times), \$500.00 fine; RR82-02985, retail to retail (had been warned several times), \$1,000.00 fine; RR42-20680, 3<sup>rd</sup> service to minor in 3 years, \$1,000.00 fine; RR87-22935 2<sup>nd</sup> service to minor (1<sup>st</sup> in October 2018/2<sup>nd</sup> in January 2019), \$1,000.00 fine; RR27-31055, shootings at bar, Revocation; RR46-31859, service to minor, bootlegging, service to intoxicated person, public nuisance, \$2,000.00 fine and must transfer permit.

Vice Chairman Krauss moved to approve the PAD forms submitted by the Prosecutor. Commissioner Grubb seconded. The motion was unanimously approved.

SIX MONTH LETTERS - EMPLOYEE PERMITS – Prosecutor Harrison recommended the Commission, pursuant to IC 7.1-3-18-9.5, order the following employee permit holder(s) to complete an alcohol evaluation and treatment program within the next six months and provide proof of same to the Commission.

BR1821647 Spencer Lough; BR1626678 Stacy Bennett; BR1909390 Christopher Anderson; BR1743194 Tyler Jason Mendenhall

Vice Chairman Krauss moved to uphold the Prosecutor's recommendation. Commissioner Grubb seconded. The motion was unanimously approved.

## HEARING JUDGE'S RECOMMENDATIONS

APPLICANT #3174790 MICHAEL THOMAS SHANKS – Hearing Judge Allen noted this applicant was denied an employee permit because he has 2 OWI convictions. The last one in 2017. Applicant appealed the denial, but did not appear at the appeal hearing and provided no evidence that would allow the denial to be reversed. The Hearing Judge recommended the Commission uphold the denial.

Vice Chairman Krauss moved to uphold the recommendation of the Hearing Judge to deny the permit. Commissioner Grubb seconded. The motion was unanimously approved.

APPLICANT #3171433 OLIVIA ANNE SZALAIY – Hearing Judge Allen noted this applicant was denied an employee permit because she has one OWI conviction. The applicant appealed the denial. She is on probation until September 2019. No evidence was presented at the appeal hearing that would allow the denial to be reversed. Hearing Judge Allen recommended the Commission uphold the denial.

Vice Chairman Krauss moved to uphold the Hearing Judge's recommendation to deny the permit. Commissioner Grubb seconded. The motion was unanimously approved.

BR1727653 AMBER GRAHAM - Hearing Judge Allen noted this applicant was denied a renewal of her employee permit because she has 4 OWI convictions. The applicant appealed the denial, but did not appear at the appeal hearing. No evidence has been submitted that would allow the denial to be reversed. The Hearing Judge recommended the Commission uphold the denial.

Vice Chairman Krauss moved to uphold the recommendation of the Hearing Judge to deny the permit. Commissioner Grubb seconded. The motion was unanimously approved.

BR1819200 SYDNEY BREAZEALE – Hearing Judge Allen noted this applicant was denied a renewal of her employee permit because she has 2 OWI convictions. The applicant appealed the denial. An appeal hearing was held, but the applicant provided no evidence that would allow the denial to be reversed. The Hearing Judge recommended the Commission uphold the denial.

Commissioner Grubb moved to uphold the Hearing Judge's recommendation to deny the renewal. Vice Chairman Krauss seconded. The motion was unanimously approved.

TC13559001 BOOMZIES – Hearing Judge Allen noted this applicant was sent notice of violation, with a pre-hearing conference date scheduled. Permittee did not appear. The permittee was then scheduled for an order to show cause hearing. Permittee did not appear. The Hearing Judge recommended the Commission find the permittee in default and a judgment should be entered to revoke the tobacco certificate.

Commissioner Grubb moved to uphold the recommendation of the Hearing Judge to revoke the tobacco certificate. Vice Chairman Krauss seconded. The motion was unanimously approved.

RR79-29537 TD ENTERTAINMENT, LLC – Hearing Judge Allen noted this permit has been in escrow for more than 5 years. The Commission allowed the permittee until 12/31/2018, to become active. Permittee did not comply. The Commission ordered permittee to appear at a hearing to show cause why the permit should not be revoked. Permittee did not appear. The Hearing Judge recommended the permit be revoked.

Vice Chairman Krauss moved to uphold the recommendation of the Hearing Judge to revoke the permit. Commissioner Grubb seconded. The motion was unanimously approved.

RR49-22718 FLOR, INC. – Hearing Judge Allen noted this permit has been in escrow for more than 5 years. The Commission allowed the permittee until 12/31/2018, to become active. Permittee did not comply. The Commission ordered permittee to appear at a hearing to show cause why the permit should not be revoked. Permittee appeared, but failed to provide any legal authority for the Commission to allow for an additional period of escrow. The Hearing Judge recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the Hearing Judge's recommendation to revoke the permit. Vice Chairman Krauss seconded. The motion was unanimously approved.

DL82-02997 WILLIAM B. SHEPHERD – Hearing Judge Allen noted this permit has been in escrow for more than 5 years. The Commission allowed the permittee until 12/31/2018, to become active. Permittee did not comply. The Commission ordered permittee to appear at a hearing to show cause why the permit should not be revoked. The permittee did appear and provided information regarding litigation that was initiated in 2014, regarding the transfer of the permit. That litigation did not conclude until November 2018. A new transfer was filed in January, however, the permit was not transferred and put into use by the December 31, 2018 deadline, so the Hearing Judge recommended the Commission revoke the permit. She also noted Objections to the Proposed Findings of Fact were filed by the attorney representing the permittee.

Vice Chairman Krauss stated he feels this permittee, in good faith, tried to submit the transfer in time, but due to the holiday it was delayed. He also noted the permittee has been a permit holder for 50 years and is caring for his wife, who is ill. The Vice Chairman moved to defer action on this permit until the April 16, 2019 meeting and allow that time for all renewals and transfers to be filed by the permittee by that date. Commissioner Grubb seconded. The motion was unanimously approved.

The Chairman also made the Objections part of the record.

### **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. Vice Chairman Krauss 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. Vice Chairman Krauss seconded. The motion was unanimously approved.

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

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

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

Three hundred thirty-three (333) renewals approved, thirteen (13) new and/or transfer applications approved, six (6) permits approved for catering, eight (8) permits approved for first year escrow; twenty-one (21) permits approved for second year escrow, five (5) permits approved for third year escrow, five (5) permits approved for fourth year escrow, two (2) permits approved for fifth year escrow, sixteen (16) new and renewal carrier permits approved and seventy (70) new/renewal direct wine shipper permits approved.

#### **RENEWAL LETTERS AND WAIVERS OF FEES**

Vice Chairman Krauss moved to approve the renewal and fee waived letters of extension that were issued for the preceding weeks. Commissioner Grubb seconded. The motion was unanimously approved.

#### **APPLICATIONS FOR DISCUSSION**

RR65-30996 FESTERS SPORTS BAR & GRILLE - Chairman Cook noted the Commission revoked this permit because the fee for this permit was returned as insufficient funds (NSF). However, because there is a renewal on file, the Chairman recommended the Commission modify the revocation order and just deny the renewal.

Vice Chairman Krauss moved to deny the renewal. Commissioner Grubb seconded. The motion was unanimously approved.

#### **INACTIVE FILES**

No Inactive Files

#### **OLD BUSINESS**

No Old Business

#### **NEW BUSINESS**

No New Business

**POLICY DETERMINATIONS**

No Policy Determinations

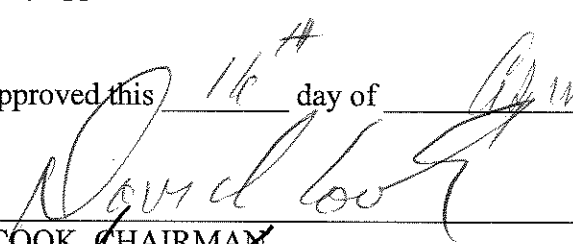
**ANNOUNCEMENTS**

PROPOSED ROUNDTABLE MEETINGS 2019 – Chairman Cook stated the proposed schedule of roundtable meetings is as follows: convenience stores 4/16; wholesalers 5/21; vintners 6/18; retailers 7/16; non-package store dealers 8/20; artisan distilleries 9/17

**ADJOURNMENT**

Vice Chairman Krauss moved to adjourn the meeting. Commissioner Grubb seconded. The motion was unanimously approved.

Approved this 16<sup>th</sup> day of April, 2019.

  
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DAVID COOK, CHAIRMAN

  
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JOHN KRAUSS, VICE CHAIRMAN

  
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DALE GRUBB, COMMISSIONER

  
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MARJORIE MAGINN, COMMISSIONER