

ALCOHOL AND TOBACCO COMMISSION

January 7, 2020

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes –

December 17, 2019

3. Prosecutor's Recommendations –

PAD Forms

New Sanction Policy

4. Hearing Judge's Recommendations –

Proposed Findings of Fact and Conclusions of Law –

RR64-31218 Pek, Inc.  
BR1764975 Mary Kay Lamparski  
BR1886621 Shelby Woolf  
BR1884332 James Smith  
BR1845428 Kayla McGuire  
RE1747148 Hunter Dillingham  
BR1919050 Geoffrey Hager  
BR1641889 Brandy Leinenback  
TC13702001 Yasinora Mini Mart  
TC12903001 Jiffy Mart

5. Consideration of Applications -

423 renewals  
59 new/transfers  
6 new/renewal direct wine shippers  
20 new/renewal carriers

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

7. Applications for Discussion –

RR33-35983 Onkar Fuel, LLC – remand

Escrow Denials –

DL55-83037 Murali Corporation  
RR45-32583 Jack Lieser  
RR85-18862 Mi Pueblo V Mexican Restaurant, Inc.  
DL45-31806 CC Ventures, LLC  
RR46-32922 Rios Family, Inc.

8. Inactive Files –

17 permits not subject to auction  
2 permits subject to auction

9. Old Business -

10. New Business –

11. Policy Determinations –

Distribution Rights

Amendments to 905 IAC 1-32.1

12. Announcements -

13. Adjournment

## MINUTES

### ALCOHOL AND TOBACCO COMMISSION

JANUARY 7, 2020

#### 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, Commissioner Maginn and Commissioner Grubb. Prosecutor Harrison, Industry Liaison Stewart, Executive Secretary Allen and Commission Counsel Hyer were in attendance.

Melissa Coxey, Mark Webb, Jeff McKean, Carmen Batts-Porter, Greg Genrich, Brooke Burtnett, Sarah Quinn, Jon Leetz, Jeff Leetz, Stan Zihlerl, Matt Brase, Tyler Starkey, Jim Zink, Mark Shublak, Jitendrakumer Patel, Bruce Leetz, Jenny Drewry and Gretchen White were present as observers.

#### DISPOSITION OF MINUTES

Commissioner Grubb moved to approve the minutes from the December 17, 2019 meeting. Vice Chairman Krauss seconded. The motion was unanimously approved.

#### PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Harrison noted there are 40 Parties' Agreed Dispositions, totaling \$15,450.00 in fines, for the Commission's approval.

The Prosecutor highlighted a few dispositions: DL88-05382, sale to minor, 3 prior violations, 3 day suspension; RR71-19406, 3<sup>rd</sup> sale to minor, \$2,250.00 fine; RR54-22833, qualifications and falsifications, \$250.00 fine and permit will be made dead on expiration date with no ability to file transfer or extension; TC11555001, sale of counterfeit Juul pods, \$650.00 fine and 10 day suspension; TC10558001, sale of counterfeit Juul pods, \$1,000.00 fine and 30 day suspension.

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

NEW SANCTION POLICY – Prosecutor Harrison stated he is looking into making changes regarding sanctions for violations, due to Commission concern about repeat offenders. He noted that in looking at the history, there seems to be no updates for the last 20 years. The Prosecutor noted that in the future, suspensions will probably be used more often, along with higher fines. This will be an internal policy, as has been in the past.

Vice Chairman Krauss commended the Prosecutor for his efforts in updating the policy. Commissioner Maginn stated it is a good idea.

#### HEARING JUDGE'S RECOMMENDATIONS

RR64-31218 PEK, INC. – Chairman Cook noted this was a denial by the Porter County Local Board and Commission. The permittee filed a timely appeal and the matter was set for hearing. Hearing Judge

Allen now submits the Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission, along with the Objections filed by the Permittee to the Proposed Findings.

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

BR1764975 MARY KAY LAMPARSKI – Hearing Judge Allen noted this is a denial of permit due to the permittee having three convictions for OWI, all in 2015, which by statute makes her eligibility date to hold a permit February 11, 2025. Permittee filed an appeal and an appeal hearing was held. The Hearing Judge submits the Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission.

Commissioner Maginn moved to uphold the Hearing Judge's recommendation to deny the permit. Vice Chairman Krauss seconded. The motion was unanimously approved. Commissioner Grubb did note that he feels sympathy for the permittee, but noted there is no latitude in the statute regarding OWI convictions.

BR1886621 SHELBY WOOLF – Hearing Judge Allen stated this permittee has two OWI convictions, so an Order to Show Cause hearing was scheduled to give the permittee a chance to provide reasons why the permit should not be revoked. Permittee did not appear. The Hearing Judge submitted Proposed Findings of Fact and Conclusions of Law and Default Judgment for recommendation to the Commission.

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

BR1884332 JAMES SMITH - Hearing Judge Allen stated this permittee has two OWI convictions, so an Order to Show Cause hearing was scheduled to give the permittee a chance to provide reasons why the permit should not be revoked. Permittee did not appear. The Hearing Judge submitted Proposed Findings of Fact and Conclusions of Law and Default Judgment for recommendation to the Commission.

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

BR1845428 KAYLA MCGUIRE - Hearing Judge Allen stated this permittee has two OWI convictions, so an Order to Show Cause hearing was scheduled to give the permittee a chance to provide reasons why the permit should not be revoked. Permittee did not appear. The Hearing Judge submitted Proposed Findings of Fact and Conclusions of Law and Default Judgment for recommendation to the Commission.

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

RE1747148 HUNTER DILLINGHAM - Hearing Judge Allen stated this permittee has two OWI convictions, so an Order to Show Cause hearing was scheduled to give the permittee a chance to provide reasons why the permit should not be revoked. Permittee did not appear. The Hearing Judge submitted

Proposed Findings of Fact and Conclusions of Law and Default Judgment for recommendation to the Commission.

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

BR1919050 GEOFFREY HAGER - Hearing Judge Allen stated this permittee has two OWI convictions, so an Order to Show Cause hearing was scheduled to give the permittee a chance to provide reasons why the permit should not be revoked. Permittee did not appear. The Hearing Judge submitted Proposed Findings of Fact and Conclusions of Law and Default Judgment for recommendation to the Commission.

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

BR1641889 BRANDY LEINENBACK - Hearing Judge Allen stated this permittee has two OWI convictions, so an Order to Show Cause hearing was scheduled to give the permittee a chance to provide reasons why the permit should not be revoked. Permittee did not appear. The Hearing Judge submitted Proposed Findings of Fact and Conclusions of Law and Default Judgment for recommendation to the Commission.

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

TC13702001 YASMINORA MINI MART - Hearing Judge Allen stated this permittee was cited for violations and was scheduled for pre-hearing conference. Permittee did not appear and did not pay the fines assessed by the Prosecutor. An Order to Show Cause hearing was scheduled and the permittee failed to appear. The Hearing Judge submitted Proposed Findings of Fact and Conclusions of Law and Default Judgment for recommendation to the Commission.

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

TC12903001 JIFFY MART - Hearing Judge Allen stated this permittee was cited for violations and was scheduled for pre-hearing conference. Permittee did not appear and did not pay the fines assessed by the Prosecutor. An Order to Show Cause hearing was scheduled and the permittee failed to appear. The Hearing Judge submitted Proposed Findings of Fact and Conclusions of Law and Default Judgment for recommendation to the Commission.

Commissioner Maginn moved to uphold the Hearing Judge's recommendation to revoke the permit. Commissioner Grubb 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 said staff with the authority of the Commission, and hereby move for approval of same, pending any escrow hearings, 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 application for changes in location, 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 escrow, if needed, and 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 direct wine shipper renewal permit. Commissioner Maginn seconded. The motion was unanimously 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 Maginn seconded. The motion was unanimously approved.

### **APPLICATIONS FOR DISCUSSION**

RR33-35983 ONKAR FUEL, LLC – Commission Counsel Hyer noted this permit was approved by the local board and the Commission, however, it appears that the orange sign that must be posted prior to the local board meeting was not posted. She recommended the Commission remand this application to the local board so the sign can be properly posted and notice given.

Commissioner Maginn moved to stay the previous approval and remand this to the local board. Commissioner Grubb seconded. The motion was unanimously approved.

DL55-83037 MURALI CORPORATION – Vice Chairman Krauss noted this permittee was denied escrow for failure to appear at two escrow hearings. The Commission received a letter from the permittee explaining that both of his parents passed away and he had to go to India, so he was not here to receive notice or attend.

Vice Chairman Krauss moved to vacate the denial of escrow and schedule for the 1/14/20 escrow hearing at 9 a.m. Commissioner Maginn seconded. The motion was unanimously approved.

RR45-32583 JACK LIESER – Vice Chairman Krauss stated the Commission denied the request for escrow for failure to appear at escrow hearings. Permittee requested two continuances, which were granted, but permittee still failed to appear.

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

RR85-18862 MI PUEBLO V MEXICAN RESTAURANT, INC. – Vice Chairman Krauss stated the Commission denied the request for escrow, for failure to appear at two escrow hearings. The Commission has received no explanation from the applicant regarding the failure to appear.

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

DL45-31806 CC VENTURES, LLC – Vice Chairman Krauss stated the Commission denied escrow for failure to appear at two escrow hearings. Notice was mailed to mailing address on file and the attorney's office. The attorney sent a letter explaining it was a misunderstanding on his part regarding the mandatory appearance at the escrow hearings. The permittee has had a final inspection and is ready to be operational.

Vice Chairman Krauss moved to vacate the denial of escrow and approve the transfer. Commissioner Maginn seconded. The motion was unanimously approved.

RR46-32922 RIOS FAMILY, INC. – Vice Chairman Krauss stated the Commission denied the request for escrow for failure to appear at two escrow hearings. The Commission has received no explanation from the applicant regarding the failure to appear.

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

#### **INACTIVE FILES**

Vice Chairman Krauss moved to make nineteen (19) permits inactive. Seventeen are not subject to auction and two are subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

#### **OLD BUSINESS**

No Old Business

#### **NEW BUSINESS**

No New Business

#### **POLICY DETERMINATIONS**

SALE OF DISTRIBUTION RIGHTS – Chairman Cook stated the Commission held a public hearing and took written comments on this matter and will take a vote, by roll call, on the two issues.

Regarding whether the sale of exclusive distribution rights creates a prohibited interest, Commissioner Maginn, Commissioner Grubb, Vice Chairman Krauss and Chairman Cook all voted, yes.

Because of the vote on the first issue, the Commission voted whether or not this decision should be made retroactive. Commissioner Maginn, Commissioner Grubb, Vice Chairman Krauss and Chairman Cook voted, no.

Chairman Cook stated this is now the policy of the Commission.

LSA DOC #19-496 - 905 IAC 1-32.1 – Chairman Cook noted the Commission held a public hearing regarding changes to the rule. The Commission also allowed time for written comments to be filed. At this time, no amendments were made, from public comments, to the rule as published.

Commissioner Maginn moved to approve the rule, as published. Vice Chairman Krauss seconded. The motion was unanimously approved.

**ANNOUNCEMENTS**

ROUND TABLE DISCUSSIONS - Commission Counsel Hyer stated the calendar for round table discussions will be made available in the near future.

JANUARY COMMISSION MEETING – Vice Chairman Krauss noted the next meeting will be on Wednesday, January 22, 2020.

**ADJOURNMENT**

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

Approved this 22<sup>nd</sup> day of January, 2020.

  
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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