

ALCOHOL AND TOBACCO COMMISSION

December 1, 2020

10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes –

November 17, 2020

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

Findings of Fact:

RR14-35639 Jimmy's Hobby Shop, LLC

Applicant #3396030 Rebecca Schliemann

BR1767274 Leslie Cole

BR1622305 Sarah McMahon

BR1767309 Christina Bolz

Applicant#3400096 Devan Whitaker

5. Consideration of Applications -

231 renewals

20 new/transfers

2 catering

4 new direct wine shippers

13 new/renewal carriers

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

7. Applications for Discussion –

DL71-31611 Vishav, Inc. – surveyor issue

DL10-32219 Gilmore Construction – transfer with the LB voting 3-1 to approve. Remonstrator

RR79-91462 Macaw Enterprises – denied escrow

8. Inactive Files –

4 permits not subject to auction

9. Old Business -

10. New Business –

11. Policy Determinations –

12. Announcements -

ATC Auction date – December 16th at 10 am. Pre-bid qualifications due December 2nd.

13. Adjournment

MINUTES

ALCOHOL AND TOBACCO COMMISSION

DECEMBER 1, 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, Commissioner Grubb, Prosecutor Harrison, Commission Counsel Hyer, and Sgt. Stewart.

By consent, the Commission, regarding items on the agenda that require signatures, gave permission for Kim Chew to initial approval for the commissioners.

DISPOSITION OF MINUTES

Vice Chairman Krauss moved to approve the minutes from the November 17, 2020 meeting. Commissioner Maginn seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Chairman Cook stated Prosecutor Harrison submitted 30 Parties' Agreed Dispositions, totaling \$18,000.00 in fines, for the Commission's approval.

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

HEARING JUDGE'S RECOMMENDATIONS

RR14-35369 JIMMY'S HOBBY SHOP, LLC –Chairman Cook turned the meeting over to Vice Chairman Krauss regarding this matter.

Chairman Cook, the Hearing Judge for this appeal, stated this is a denial of a transfer of ownership. An appeal was timely filed. The concerns dealt with gambling by the owner and whether the applicant was involved. Chairman Cook submitted Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission. Objections were filed by the applicant.

Commissioner Maginn moved to uphold the Findings denying the transfer. Commissioner Grubb seconded. The motion was unanimously approved.

#3396030 REBECCA SCHLIEMANN – Commissioner Maginn stated the permit was denied because the applicant has three OWI convictions in the past ten years. An appeal was filed and the matter was set for hearing. Commissioner Maginn, as Hearing Judge, submitted Proposed Findings of Fact and Conclusions of Law, which found, by statute, the applicant is not eligible to hold the permit until October 9, 2024.

Commissioner Grubb moved to uphold the Findings and deny the permit. Vice Chairman Krauss seconded. The motion was unanimously approved.

BR1767274 LESLIE COLE – Commissioner Maginn stated the renewal of this permit was denied because the permittee has two OWI convictions in the past ten years. Per statute, the applicant isn't eligible to hold a permit until two years after the sentence of the last conviction is completed. An appeal was filed and a hearing was held. Commissioner Maginn, as Hearing Judge, submitted Proposed Findings of Fact and Conclusions of Law, which found the applicant not eligible to hold the permit until October 28, 2020.

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

BR1622305 SARAH MCMAHON – Commissioner Maginn stated the renewal of this permit was denied because the permittee has two OWI convictions in the past ten years. Per statute, the applicant isn't eligible to hold a permit until two years after the sentence of the last conviction is completed. An appeal was filed and a hearing was held. Commissioner Maginn, as Hearing Judge, submitted Proposed Findings of Fact and Conclusions of Law, which found the applicant not eligible to hold the permit until April 20, 2021.

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

BR1767309 CHRISTINA BOLZ – Commissioner Maginn stated the renewal of this permit was denied because the permittee has two OWI convictions in the past ten years. Per statute, the applicant isn't eligible to hold a permit until two years after the sentence of the last conviction is completed. An appeal was filed and a hearing was held. Commissioner Maginn, as Hearing Judge, submitted Proposed Findings of Fact and Conclusions of Law, which found the applicant not eligible to hold the permit until April 25, 2021.

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

#3400096 DEVAN WHITAKER - Commissioner Maginn stated the permit was denied because the applicant has two OWI convictions in the past ten years. Per statute, the applicant isn't eligible to hold a permit until two years after the sentence of the last conviction is completed. An appeal was filed and a hearing was held. Commissioner Maginn, as Hearing Judge, submitted Proposed Findings of Fact and Conclusions of Law, which found the applicant not eligible to hold the permit until April 7, 2022.

Commissioner Grubb moved to uphold the Findings and deny the renewal. Vice Chairman Krauss 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 catering applications. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the carrier applications. 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.

RENEWAL LETTERS AND WAIVERS OF FEES

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

APPLICATIONS FOR DISCUSSION

DL71-31611 VISHAV, INC. – Chairman Cook stated the Commission approved the transfer of this permit. However, the location of the permit is not inside the city limits, which is required for a package store permit, but the application that was submitted stated it was. No resolution has been found that would allow this transfer.

Commissioner Maginn moved to withdraw approval of the transfer. Vice Chairman Krauss seconded. The motion was unanimously approved.

DL10-32219 GILMORE CONSTRUCTION– Chairman Cook noted this is a transfer of ownership with the local board voting 3-1 to approve.

Vice Chairman Krauss stated this permit has been in escrow for five years and the applicant, which is a construction company, intends to place the permit in escrow until a location is found. Counsel for the remonstrator cited IC 7.1-3-1.1-6, the commission may not accept an application for transfer of ownership of the permit except upon a showing to the satisfaction of the commission of both of the following: (1) Exceptional and unusual circumstances that necessitate a transfer of ownership of the permit, including bankruptcy or death of the permit holder; (2) That the permit holder does not intend to speculatively sell the permit. No evidence was presented in regards to this by counsel of the applicant.

Chairman Cook stated that there have been other instances where a transfer was allowed without providing any evidence cited by Vice Chairman Krauss, however, in this particular case, opposing

counsel appeared and presented a challenge pursuant to the statute. The Chairman felt this put the Commission in a different position and it must respond.

Vice Chairman Krauss moved to overturn the local board's recommendation and deny the transfer. Commissioner Grubb seconded. The motion was unanimously approved.

RR79-91462 MACAW ENTERPRISES – Chairman Cook noted this is an escrow hearing reconsideration.

Commissioner Maginn noted the Commission denied escrow due to the permittee failing to attend the escrow hearing. It appears that the hearing notice was sent to the permittee, instead of the Power of Attorney. The permittee states notice was not received.

Commissioner Maginn moved to withdraw the denial and reschedule for the January 12, 2021 escrow hearing date. Commissioner Grubb seconded. The motion was unanimously approved.

INACTIVE FILES

Vice Chairman Krauss moved to make four permits inactive. All four permits are not subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

OLD BUSINESS

No Old Business

NEW BUSINESS

No New Business

ANNOUNCEMENTS

2020 ATC PERMIT AUCTION – Chairman Cook stated the auction is December 16, 2020 at 10 a.m. in the IGCS Auditorium. The pre-bid applications are due on December 2nd.

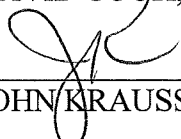
ADJOURNMENT

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

Approved this 15th day of December, 2020.



DAVID COOK, CHAIRMAN



JOHN KRAUSS, VICE CHAIRMAN

D.G.

DALE GRUBB, COMMISSIONER

M.M.

MARJORIE MAGINN, COMMISSIONER