

ALCOHOL AND TOBACCO COMMISSION
NOVEMBER 15, 2022
10:00 A.M.

1. Call to Order and Noting of Quorum –

2. Disposition of Minutes –

November 1, 2022

3. Prosecutor's Recommendations –

PAD Forms

4. Hearing Judge's Recommendations –

TC14058001 Fuel Express Inc. – Proposed Findings of Fact

RR48-01351 Rose's Pub, Inc. Proposed Findings of Fact

5. Consideration of Applications -

367 renewals
63 new/transfers
19 catering
19 new/renewal carriers
2 new direct wine sellers

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

7. Applications for Discussion –

TC14953001 Tokas LLC – request to set aside default judgment

DL45-32998 Singh Brother LLC – transfer with LB voting 2-1 to deny

RC71-07828 Clay Township Civic & Demo Club – renewal with LB voting 4-0 to deny

RR45-33779 DAD Properties LLC – renewal with LB voting 3-0 to approve

RR49-39284 Ale Yard Indy, LLC – new with LB voting 4-0 to approve

RR49-39238 Liberty Land Investments, LLC – transfer with LB voting 4-0 to approve

RR49-91268 Outback Steakhouse of Florida LLC – renewal with LB voting 3-1 to approve

8. Inactive Files –

19 permits not subject to auction

9. Old Business -

10. New Business –

11. Policy Determinations –

Non-Rule Policy – Local Board ethics training

New Non-Rule Policy Documents

12. Announcements -

Round Table Discussions –

Wholesalers – November 15 @ 1:30 p.m. via Microsoft Teams

Retailers – December 6 @ 1:30 p.m. via Microsoft Teams

2023 Amended Commission Meeting Dates - 1st week of January 2023, Wednesday January 4
3rd week of January 2023, Wednesday January 18
1st week of May 2023, Wednesday May 3
1st week of July 2023, Wednesday July 5
1st week of September 2023, Wednesday September 6
1st week of November 2023, Wednesday November 8
4th week of December 2023, Wednesday December 27

13. Adjournment

MINUTES

ALCOHOL AND TOBACCO COMMISSION

NOVEMBER 15, 2022

CALL TO ORDER/NOTING OF QUORUM

Chairman Allen called the meeting to order and noted the quorum and the attendance. Vice Chairman Payne, Commissioner Maginn, Commissioner Grubb, Deputy Director Kirkman, General Counsel Merritt, and Prosecutor Wignall were present.

DISPOSITION OF MINUTES

Vice Chairman Payne moved to approve the minutes from the November 1, 2022 meeting. Commissioner Grubb seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Vice Chairman Payne moved to approve the Parties' Agreed Dispositions, submitted by Prosecutor Wignall. Seventeen dispositions were submitted with fines totaling \$10,300.00. Commissioner Grubb seconded. The motion was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

TC14058001 FUEL EXPRESS INC. – Vice Chairman Payne, who sat as hearing judge, stated this establishment was cited for tobacco violations. The certificate holder failed to appear for the Pre-Hearing Settlement Conference and the Order to Show Cause Hearing. Vice Chairman Payne recommended the Default Judgment Order for Excise to seize all tobacco products/paraphernalia, all US currency on the premises and to revoke the certificate.

Vice Chairman Payne moved acceptance of the recommendation and revocation of the certificate. Commissioner Grubb seconded. The motion was unanimously approved.

RR48-01351 ROSE'S PUB, INC. – Chairwoman Allen, who sat as hearing judge, stated the permittee filed a transfer of ownership, which was approved by the local board and the Commission. Shortly after a Madison County court order was received granting the permit to a 3rd party. Based on that order, the Commission reversed their approval of the transfer. The 3rd party has not filed any paperwork with the Commission to transfer the permit. The court paperwork did not order the Commission to act.

Chairwoman Allen moved to reverse the denial and allow the renewal and transfer of the permit. Vice Chairman Payne 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. Vice Chairman Payne 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 new and renewal carrier applications. Commissioner Maginn seconded. The motion was unanimously approved.

Commissioner Grubb moved to approve the new direct wine seller applications. Commissioner Maginn seconded. The motion was unanimously approved.

RENEWAL LETTERS AND WAIVERS OF FEES

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

APPLICATIONS FOR DISCUSSION

TC14953001 TOKAS LLC – Chairwoman Allen stated this tobacco certificate was revoked by the Commission at the last meeting. The certificate holder, after receiving the notice of the revocation, reached out to Prosecutor Wignall asking the default judgment and revocation be set aside. The Chair recommended setting a date of November 30th for settlement offers to be signed and fines paid.

Prosecutor Wignall stated he has already received signed settlement offers, along with payment for the fines.

Commissioner Maginn moved to set aside the revocation. Vice Chairman Payne seconded. The motion was unanimously approved.

DL45-32998 SINGH BROTHER LLC – Vice Chairman Payne moved to continue this until December 6, 2022. Commissioner Maginn seconded. The motion was unanimously approved.

RC71-07828 CLAY TOWNSHIP CIVIC & DEMO CLUB – Chairwoman Allen noted this is a renewal with the local board voting 4-0 to deny.

Commissioner Maginn stated the permittee had violations in the last year.

Commissioner Maginn moved to uphold the recommendation of the local board to deny the renewal. Vice Chairman Payne seconded. The motion was unanimously approved.

RR45-33779 DAD PROPERTIES, LLC – Chairwoman Allen noted this is a renewal with the local board voting 3-0 to approve.

Commissioner Maginn stated there were a number of remonstrators at the local board hearing, who feel this has become a public nuisance. There were also individuals present in favor of the bar.

Commissioner Maginn moved to approve the renewal for a one-year renewal. Vice Chairman Payne seconded and added that the owner needs to work with the community to address the issues that are of concern. The motion was unanimously approved.

RR49-39284 ALE YARD INDY, LLC – Chairwoman Allen noted this is a new application with the local board voting 4-0 to approve.

Commissioner Maginn stated this business has an outside space concept. There was a remonstrator present who was concerned with the noise, but had no complaints with the owners.

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

RR49-39238 LIBERTY LAND INVESTMENTS, LLC – Chairwoman Allen noted this is a transfer with the local board voting 4-0 to approve.

Commissioner Maginn moved to uphold the local board's recommendation to approve.

Deputy Director Kirkman stated the Commission received a late request from the seller and buyer to continue this matter.

Commissioner Maginn moved to continue this to the December 20, 2022 meeting to allow any issues to be worked out. Vice Chairman Payne seconded. The motion was unanimously approved.

RR49-01268 OUTBACK STEAKHOUSE OF FLORIDA LLC – Chairwoman Allen noted this is a renewal with the local board voting 3-1 to approve.

Commissioner Maginn stated the business had a violation for no employee permit by the manager, which is a concern because the manager is responsible for overseeing the other employees.

Chair Allen mentioned that the local board was continued a few times because no one appeared to discuss the violation. The local board was concerned about the lack of attention to the ATC requirements.

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

TC14685001 BLACK DIAMOND SMOKE SHOP – By consent, the commissioners added this matter to the agenda.

Chairwoman Allen stated the Commission received a request to set aside default judgment. The notice also stated that the attorney for the certificate holder sent notice to the Commission before the vote on

the revocation, but that notice was not received. The certificate holder wants the opportunity to negotiate terms of the settlement, which is more appropriate to do with the prosecutor.

Chairwoman Allen recommended the Commission conditionally set aside the default judgment pending the certificate holder entering a settlement or requesting in writing a violation hearing prior to November 30, 2022, with the default judgment remaining in place if that has not taken place.

Commissioner Maginn moved to uphold the recommendation of the Chair. Vice Chairman Payne seconded. The motion was unanimously approved.

Vice Chairman Payne stated that in the future, he will probably vote not to set aside judgments for businesses that fail to do what is ordered by the Commission. He noted the time and effort that is put into these matters by the prosecutor and the ATC, only to be ignored by the permittees who require these permits for their business.

Chairwoman Allen agreed and stressed if permittees receive a notice to appear from the Commission, that is an order and ignoring that order can result in revocation of the permit/certificate.

INACTIVE FILES

By consent, permit #MM20-30547 was added to the inactive list.

Commissioner Grubb moved to make twenty permits dead that are not subject to auction. Commissioner Maginn seconded. The motion was unanimously approved.

OLD BUSINESS

No Old Business

NEW BUSINESS

No New Business

POLICY DETERMINATIONS

NON-RULE POLICY – LOCAL BOARD ETHICS TRAINING – Commissioner Maginn moved to adopt the non-rule policy. Vice Chairman Payne seconded. The motion was unanimously approved.

NON-RULE POLICY – VIOLATION HISTORY – Chairwoman Allen stated there is a new policy on the website regarding violation history on applications. This policy will be voted on at the December 6, 2022 meeting.

ANNOUNCEMENTS

ROUND TABLE DISCUSSIONS- Round table discussions dates are set.

Wholesalers – November 15 @ 1:30 p.m. via Microsoft Teams

Retailers – December 6 @ 1:30 p.m. via Microsoft Teams

2023 AMENDED COMMISSION MEETING/ESCROW MEETING DATES -

- 1st week of January 2023, Wednesday January 4
- 3rd week of January 2023, Wednesday January 18
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- 1st week of November 2023, Wednesday November 8
- 4th week of December 2023, Wednesday December 27

ADJOURNMENT

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

Approved this 6th day of December, 2022.



JESSICA ALLEN, CHAIR



JIM PAYNE, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER