

**STATE OF INDIANA
BEFORE THE ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
3L's INCORPORATED)	
d/b/a JOJO'S PIZZERIA)	PERMIT NO. RR20-22666
51513 STATE ROAD-19)	
GRANGER, IN 46530)	
)	
Applicant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

3 L's, Inc., d/b/a JoJo's Pizzeria, 52145 State Road 19, Granger, IN 46530, permit number RR20-22666 (Applicant), is the applicant for the renewal of a permit to sell beer, liquor, and wine, in a restaurant located in an unincorporated area to be issued by the Alcohol and Tobacco Commission (ATC). The application was assigned to the Alcoholic Beverage Board of Elkhart County (Local Board). The Applicant's matter was heard on September 17, 2015, where it was denied by a vote of 3-0. On October 6, 2015, the Commission adopted the findings of the Local Board and denied the permit. On October 27, 2015, the Applicant filed for an appeal hearing regarding the Commission's denial, which was granted.

The matter was set for hearing on December 16, 2015, and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing Officer also took judicial notice of the entire contents of the file related to this cause. Having been duly advised of the facts and law at issue, the Hearing Officer now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
1. Leann Jojo, Owner, Applicant.
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
1. None.
- C. The following individuals testified before the Local Board against the Applicant in this cause:
1. None.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
1. None.

III. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
1. Leann Jojo, Owner, Applicant; and
 2. Mitch Heppenheimer, Attorney for Applicant.
- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
1. Pictures of the outside, inside, dining and kitchen area of the premises (Exhibit 1);
 2. Hand drawn floor plan of the premises (Exhibit 2);
 3. JoJo's Pizzeria menu (Exhibit 3); and
 4. Petition signed by customers who wished Jojo's Pizzeria to retain their permit (Exhibit 4).
- C. The following individuals testified before the Commission against the Applicant in this cause:
1. None

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

1. None

IV. FINDINGS OF FACT

1. 3 L's, Incorporated, d/b/a JoJo's Pizzeria, 51513 State Road 19, Elkhart, IN 46514, permit number RR20-22666, is the Applicant for a beer, liquor, and wine restaurant permit. (ATC File).

2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2. (Local Board Hearing; ATC Hearing).

3. The Applicant has a three-way permit which allows them to sell beer, wine, and liquor, but only sells beer and wine. (ATC Hearing).

4. The Applicant is of good repute in the community as required by 905 IAC 1-27-1. (ATC Hearing).

5. Applicant received permit in 2006. (ATC File).

6. In 2010, Applicant was cited for Furnishing Alcohol to a Minor (Ind. Code §7.1-5-7-8), of which a fine was paid. (ATC File).

7. In 2012, Applicant was cited for Furnishing Alcohol to a Minor (Ind. Code §7.1-5-7-8) and Improper Display of Permit (IC §7.1-3-1-20), of which a fine was paid. (ATC File).

8. On June 30, 2014, Applicant was cited for Furnishing Alcohol to a Minor (Ind. Code §7.1-5-7-8), of which a fine was paid. (ATC File).

9. The premises is open Sunday through Thursday from 4:00 pm to 9:00 pm and on Friday and Saturday from 4:00 pm to 10:00 pm. (Exhibit 4).

10. Leann and Larry Jojo are the owners of the Applicant and one is present in the restaurant at all times. (ATC Hearing).

11. Applicant has modified their service procedure so that if a server is under the age of 21, either Leann or Larry Jojo personally checks the customers ID, fill their alcohol order, and serve it to the customer. (ATC Hearing).

12. The Applicant estimates that they sell approximately \$245,000/year in food and \$5,000/year in alcohol and that the alcohol is an accommodation for their customers. (ATC Hearing).

13. The pizzeria primarily caters to families – there are no games such as pool tables, dart boards, etc. Groups of kids do not frequent the premises. (ATC Hearing).

14. No remonstrators appeared at the Local Board hearing or the ATC Hearing and there have been no complaints by residents regarding the Applicant. (Local Board Hearing; ATC Hearing).

15. No police runs were noted, nor reports of criminal activity presented before the Local Board or Commission. (Local Board Hearing, ATC Hearing).

16. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.

2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.

3. The Commission is authorized to act upon proper application. *Id.*

4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).

5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).

6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).

7. In determining whether to renew a permit, the Commission may consider whether the applicant refuses to comply with the provisions and the rules and regulations of the Commission. Ind. Code §7.1-3-23-5.

8. The Commission may reverse a local board's action in denying an application for a permit *only* if it finds that the local board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code §7.1-3-19-11.


9. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

IV. RECOMMENDATION

The Applicant has been in business for approximately nine (9) years. In that time, he has accumulated three (3) violations, the most recent a year and one-half ago. The violations, though, have been for serious issues – namely serving minors alcohol, which are not to be taken lightly. The Applicant has made changes to their procedures which will include one of the owners checking each customer's identification and serving alcohol to the customer. Considering the limited hours they are open and the limited amount of alcohol they serve, it is not unreasonable to believe this can be accomplished. Based on this procedure and the commitment of the owners to personally check identification, it is recommended that the Applicant be granted a one-year permit, to be reviewed after that time. Should the Applicant receive another violation before the end of that period, it is recommended that the Applicant not be renewed at the next hearing.

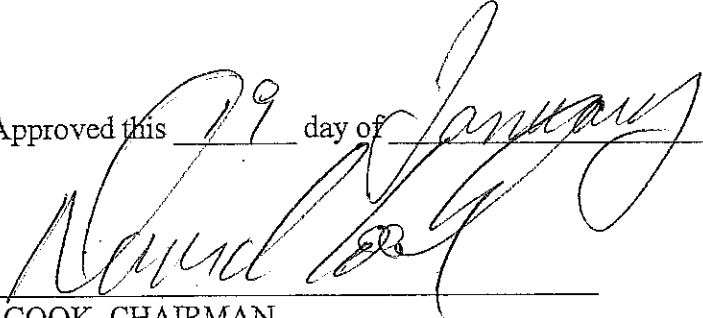
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Elkhart County Local Board resulting in a 3-0 vote and the Commission vote to deny the application for the permit number RR20-22666, should be reversed and the application of 3 L's, Incorporated, d/b/a JoJo's Pizzeria, 51513 State Road 19, Elkhart, IN 46514, for a beer, liquor, and wine retail permit, thus applied for herein, be APPROVED for a one-year period of time on terms of strict compliance.

DATE: December 29, 2015




David Rothenberg, Hearing Officer

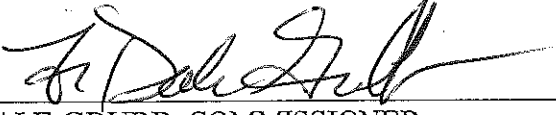
Approved this 19 day of January, 2016.




DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER

