STATE OF INDIANA
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF THE PERMIT OF	)	
SHRIRAM, INC. d/b/a STOP & GO LIQUORS 5615 CALUMET AVENUE HAMMOND, INDIANA 46320	)	**PERMIT NO. DL45-13278**
Applicant.	)	

PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Shriram, Inc., d/b/a Stop & Go Liquors, 5615 Calumet Avenue, Hammond, Indiana 46320, permit number DL45-13278 (Applicant), is the Applicant for a type 217[1] Alcohol and Tobacco Commission (Commission) permit. The application was assigned to the Alcoholic Beverage Board of Lake County (Local Board). The Local Board held a hearing on April 4, 2013, and voted 4-0 to deny this application. On April 16, 2013, the Commission voted to deny the application at its regularly held meeting.

On May 3, 2013, the Applicant filed Objection and Request for Appeal Hearing, and the matter was assigned to Commission Hearing Officer Melissa Coxey (Hearing Judge). The matter was set for hearing on December 2, 2013, and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing judge 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 Judge now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

[1] Liquor, beer and wine (package store) dealer located in an incorporated area.

III. EVIDENCE BEFORE THE LOCAL BOARD

A. The following individuals testified before the Local Board in favor of the Applicant in this cause:

1. None.

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.

IV. EVIDENCE BEFORE THE COMMISSION

A. The following individuals testified before the Commission in favor of the Applicant in this cause:

1. Nirmal Shah, Applicant.

2. Christopher Dadas, Applicant.

B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:

1. Letter to ABC Alarm Company dated October 5, 2012;
2. Hammond Police Department Victim Information Notice;
3. Letter from Grange Insurance dated October 3, 2013;
4. Email from Nirmal Shah requesting loss history;
5. Loss run report;
6. Letter to Jeries Mansour regarding lease agreement;
7. Letter from Blaine Street Partners regarding destruction of damaged alcoholic beverages; and,
8. Retail Food Establishment Inspection Report.

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.

V. FINDINGS OF FACT

1. Shriram, Inc., d/b/a Stop & Go Liquors, 5615 Calumet Avenue, Hammond, Indiana 46320, permit number DL45-13278, is the Applicant for renewal of a Type 217 permit. (ATC File).

2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2, Ind. Code § 7.1-3-5-2, Ind. Code § 7.1-3-10-4 and Ind. Code § 7.1-3-15-2. (Local Board Hearing; ATC Hearing).

3. The permit is not within two hundred (200) feet of a church or school. (ATC File; Local Board Hearing; ATC Hearing).

4. The permit is placed in a commercial location and is not placed in a residential district as referred to in Ind. Code § 7.1-3-19-13 and 905 IAC 1-18-1. (ATC File; ATC Hearing).

5. The Applicant is of good moral character and of good repute in the community as required by 905 IAC 1-27-1. (Local Board Hearing; ATC Hearing).

6. The Applicant's store is similar to stores of competitors holding alcoholic beverage permits in Indiana. (Local Board Hearing; ATC Hearing; ATC File).

7. Local Board voted to deny renewal based on failure to appear at Local Board Hearing and pending violations. (ATC File; ATC Hearing)

8. Applicant's permit premises was damaged by fire on September 23, 2012. (ATC Hearing).

9. Fire damage prevented Applicant from receiving notice of the Local Board Hearing. (ATC Hearing).

10. Applicant settled violation by paying a Two Hundred Fifty Dollar ($250) fine.

11. Applicant has no pending violations. (ATC File).

12. The Applicant has submitted substantial evidence that it is qualified to hold a Type 217 package store permit. (ATC Hearing).

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

VI. 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. The Applicant is a fit and proper applicant, has maintained a reputation for decency and law obedience, and is qualified to hold an alcoholic beverage permit under Indiana law. 905 IAC 1-27-1 and Ind. Code § 7.1-3-9-10.

8. The permit location is not in a residential district. Ind. Code § 7.1-3-19-13 and 905 IAC 1-18-1.

9. The permit location is more than 200 feet from a church or school. Ind. Code § 7.1-3-21-10 and Ind. Code § 7.1-3-21-11.

10. The Applicant is not disqualified from holding an ATC permit. Ind. Code § 7.1-3-4-2; Ind. Code § 7.1-3-5-2 and Ind. Code § 7.1-3-15-2.

11. Indiana law charges the Commission with ensuring that laws and regulations are enforced uniformly throughout the state. Ind. Constitution, Art. IV, Sec. 23; *See, Indiana Alcoholic Beverage Commission v. Osco Drug*, 431 N.E.2d 823, 830 (Ind. App. 1982).

12. To deny the application to this Applicant while granting other similarly situated applications would be arbitrary and capricious and otherwise not in accordance with the law. Ind. Code § 7.1-3-19-11.

13. The recommendation of the Local Board was not based on substantial evidence. (Local Board Hearing; ATC Hearing).

14. The Commission may reverse a local board's action in denying an application for a permit 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.

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

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Lake County Local Board resulting in a 4-0 vote concerning the application for the permit number DL45-13278, was not supported by substantial evidence, was arbitrary and capricious, and otherwise not in accordance with law, and the Alcohol and Tobacco Commission should approve said application. The application for renwal of Shriram, Inc., d/b/a Stop & Go Liquors, 5615 Calumet Avenue, Hammond, Indiana, for the Type 217 permit number DL45-13278, was sufficient and the permit applied for herein is GRANTED.

DATE: July 30, 2014

Melissa L. Coxey, Hearing Judge

Approved this 18th day of August, 2014.

ALEX HUSKEY, CHAIRMAN

DAVID JOHNSON, VICE CHAIR

DALE GRUBB, COMMISSIONER

MELISSA COXEY, COMMISSIONER