

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
DOLGENCORP, LLC)	
d/b/a DOLLAR GENERAL STORE #3215)	PERMIT NO. DL14-29013
106 EAST MAIN STREET)	
ODON, INDIANA 47562)	
)	
Applicant.)	

**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. BACKGROUND OF THE CASE

Dolgenercorp, LLC, d/b/a Dollar General Store #3215, 106 East Main Street, Odon, Indiana 47562, permit number DL14-29013 (Applicant), is the applicant for a type 115¹ Alcohol and Tobacco Commission (Commission) permit. The application was assigned to the Alcoholic Beverage Board of Daviess County (Local Board). The Local Board held a hearing on October 16, 2012, and voted 3-0 to deny this application. On November 7, 2012, the Commission voted to deny the application at its regularly held meeting.

On November 20, 2012, Applicant filed Petitioner Dollar General's Objection and Request for Appeal Hearing, and the matter was assigned to the Hearing Officer Melissa Coxey (Hearing Officer). The matter was set for hearing on April 29, 2013, 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.

¹ Beer and wine dealer grocery 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. Jeff McKean, attorney for the Applicant; and,
 - 2. Karissa Hale, District Manager for the Applicant.

- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
 - 1. Dollar General Overview.

- C. The following individuals testified before the Local Board against the Applicant in this cause:
 - 1. Russell R. Dart, remonstrator;
 - 2. Connie Lanham, remonstrator;
 - 3. Debbie Lawyer, remonstrator; and,
 - 4. Alison Padgett, remonstrator.

- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
 - 1. One page document titled “Dollar General Petition” containing nineteen signatures of individuals – submitted by Remonstrator Russell Dart;
 - 2. A one page document titled “Dollar General Petition” containing twenty signatures of individuals – submitted by Remonstrator Russell Dart;
 - 3. A fifty-nine page petition bearing approximately 609 signatures opposing the applicant’s request – submitted by Remonstrator Debbie Lawyer;
 - 4. A one page photocopy of a letter written by Marlene Mattingly – submitted by Remonstrator Debbie Lawyer; and,
 - 5. A one page letter signed by Joy and Von Spry by Marlene Mattingly – submitted by Remonstrator Debbie Lawyer.

IV. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
 - 1. Jeff McKean, attorney for the Applicant.

- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
 - 1. List of other permits held by Applicant;

2. Permit information related to alcoholic beverage permits in close proximity to the proposed permit premises;
 3. Proposed Findings of Fact and Conclusions of Law – Casey’s Enterprises, LLC;
 4. Indiana State Excise Police Press Release regarding Alcohol-Compliance Rates;
 5. Indiana State Excise Police Press Release regarding Mid-Year Alcohol Compliance Rates; and,
 6. Table highlighting alcohol compliance failure in Daviess County.
- C. The following individuals testified before the Commission against the Applicant in this cause:
1. Russell Dart, remonstrator;
 2. Debbie Lawyer, remonstrator;
 3. Connie Lanham, remonstrator; and,
 4. Glenda Scudder, remonstrator.
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
1. Approximately forty-two letters of opposition to the application;
 2. Summary of opposition submitted by Debbie Lawyer;
 3. Summary of alcohol laws submitted by Debbie Lawyer;
 4. Summary of certified server training programs submitted by Debbie Lawyer;
 5. Message from Indiana State Excise Police submitted by Debbie Lawyer;
 6. Information regarding Indiana State Excise Police Intensified Patrols, Survey of Alcohol Compliance and Stop Underage Drinking and Sales initiatives submitted by Debbie Lawyer;
 7. Summary of alcohol criminal enforcement submitted by Debbie Lawyer;
 8. Agent detail report of property at 102 – 104 West Main Street, Odon, IN 47562; and,
 9. Presentation made to Daviess County Local Board in October 2012 submitted by Debbie Lawyer.

V. FINDINGS OF FACT

1. Dolgencorp, LLC, d/b/a Dollar General Store #3215, 106 East Main Street, Odon, Indiana 47562, permit number DL14-29013, is the Applicant for a Type 115 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 § 7.1-3-10-2 and Ind. Code § 7.1-3-15-2. (Local Board Hearing; ATC Hearing).

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

4. The permit is being placed in a commercial location and is not being 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. Nineteen (19) persons appeared at the Local Board Hearing to remonstrate against the issuance of this permit. Seventeen (17) persons appeared at the ATC Hearing to remonstrate against the issuance of this permit.

8. Remonstrators presented evidence to indicate that there is no need or desire in the Odon community for the permit by submitting petitions and letters opposing issuance of the permit. (Local Board Hearing; ATC Hearing; ATC File).

9. Applicant did not provide a single witness to rebut remonstrators' testimony that there is no need and desire for this application.

10. The weight of the evidence indicates that there is no need and desire in the Odon community for Applicant to obtain the permit. (Local Board Hearing; ATC Hearing).

11. 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. In determining whether to issue a permit, the Commission may consider the geographic desirability of a proposed permit location, the need for the permit at the proposed location, the community's desire for the permit, and the impact of the permit on the community and other businesses. 905 IAC 1-27-4.

8. The weight of the evidence indicates that there is not a need and desire in the community to receive the services of this Applicant. *Id.*

9. The recommendation of the Local Board was based on substantial evidence. (Local Board Hearing; ATC Hearing).

10. 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.

11. 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 Daviess County Local Board resulting in a 3-0 vote to deny the application for the permit number DL14-29013, was supported by substantial evidence, was not arbitrary and capricious, or otherwise not in accordance with law, and the Alcohol and Tobacco Commission should deny said application. The application of Dolgencorp, LLC, d/b/a Dollar General Store #3215, 106 East Main Street, Odon, Indiana, for the Type 115 permit number DL14-29013, was insufficient and the permit applied for herein is DENIED.

DATE: August 14, 2013

Melissa L. Coxey, Hearing Office